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Vol. II

(EXHIBITS—PART 3)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

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[fol. 200] PLAINTIFF'S EXHIBIT 34

No. 34, Record, p. 282

That the Corporation Commission on June 27th, 1931, did receive the petition of Otto Bradford, Umpire of the Oklahoma City field, in the following form:

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

Cause No. 10326

In re Application of WIRT FRANKLIN for Rules and Regulations to be Established by the Commission to Prevent Waste of Petroleum in the Producing Oil Fields of the State of Oklahoma

Comes now Otto B. Bradford, Umpire of the Oklahoma City field and states the following:

That by order of this Commission No. 5486 in Cause No. 10326, dated May 29th, 1931, which order is now in force and effect, all wells not illegally overproduced, were allowed to produce 6 percent of their potentials during the month of June, 1931, less any permitted overproduction; that the Umpire permit any reasonable market demand above that amount necessary to take care of the allowable percentages to be allotted to the underproduced and underrun wells.

Petitioner further shows that the underrun condition of the field has been practically alleviated and that the field is now approximately even; that a market outlet of 100,000 barrels per day in excess of the amount of oil that can be produced under the present order, beginning as of 7:00 o'clock A. M. June 27, 1931, for the remainder of the month has been secured, which additional outlet should increase the allowable of the wells not illegally overproduced by 4 percent.

That by said Order No. 5486, supra, the Commission was to be advised by the Umpire when the underrun and underproduced condition of the field was eliminated, and when any additional market outlet was secured, for the further action and allotment of such market demand.

Whereas, the daily demand of pipe line purchasers for the balance of the current month is estimated to be at least 200,000 barrels daily. An analysis of the condition of the Oklahoma City field at this time shows that there is a place to produce runs from wells entitled to produce under the terms of Order No. 5486 from 7 A. M. June 27, 1931 to 7 A. M. July 1, 1931 both inclusive, the amount of 1,340,588 barrels, that of such amount 200,000 barrels cannot be produced by reason of the fact that certain wells are dead or otherwise incapable of producing that amount of oil. Further, there is or will be approximately 700,000 barrels which cannot be produced or run due to the fact that 700,000 barrels consist of tank bottoms, working stock and oil that will be produced on June 30th, 1931 all of which will not be available to pipe line purchasers. This shows of the total amount of 1,340,588 barrels, a balance of 440,588 barrels will be available for allocation to pipe line purchasers between 7 A. M. June 27, 1931, to 7 A. M. July 1st, 1931, dates inclusive or a daily average of 110,147 barrels daily.

Whereas, the estimate daily requirements for delivery to pipe line purchasers is or will be in excess of 200,000 barrels daily. The analysis of the condition of the field reflects an average daily shortage between 7 A. M. June 27th, 1931 to July 1st, 1931, between 80,000 to 100,000 barrels daily.

Therefore, an increase in the rate of production of 4% over and above, provided for in Order No. 5486, would enable the field to produce and deliver approximately amount of 101,562 barrels daily which in effect would enable the field to fulfill the current pipe line demand during the period between 7 A. M. June 27th to 7 A. M. July 1, 1931, both inclusive.

Wherefore, premises considered, petitioner prays that [fol. 201] this Commission make and enter an order increasing the allowable of wells not illegally produced to 10 per cent of their potentials, effective as of 7:00 o'clock A. M. June 27, 1931 and to continue in full effect until 7:00 o'clock A. M. July 1, 1931.

Respectfully submitted.

Otto B. Bradford, Umpire of the Oklahoma City field, by Ralph G. Thompson, Miley, Hoffman, Williams & France, His Attorneys.

STATE OF OKLAHOMA,
County of Oklahoma, ss:

Ralph G. Thompson, of lawful age, being first duly sworn, deposes and says:

That he is associated in the law firm of Miley, Hoffman, Williams and France; that said law firm are the attorneys for Otto B. Bradford; that he has read the above and foregoing petition and is familiar with the contents thereof and the statements are true as he verily believes.

(Signed) Ralph G. Thompson.

Subscribed and sworn to before me this 27th day of June, 1931. My Commission Expires Aug. 9, 1934.
(Signed) Jane Callagy.

[fol. 202] PLAINTIFF'S EXHIBIT 35

No. 35, Record, p. 282

Corporation Commission Order #5548, reprinted as a part of Exhibit #33. (Not included here.)

[fol. 203] PLAINTIFF'S EXHIBIT 36

No. 36, Record, p. 282

Order No. 847, dated October 1st, 1914, which reads as follows:

Order No. 847. Cause No. 2041

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

vs.

MAGNOLIA PIPE LINE COMPANY, a Corporation; OKLAHOMA Pipe Line Company, a Corporation; Gulf Pipe Line Company of Oklahoma, a Corporation; The Texas Company, a Corporation, and Prairie Oil & Gas Company, a Corporation

On the 30th day of September, 1914, the Magnolia Pipe Line Company notified the Attorney General and the Cor-

poration Commission that it would reduce the price of oil in the Healdton field on October 6th, to 40 cents per barrel.

It is hereby ordered that no producer in the Healdton field shall take any oil from the oil sands of that field, for sale, at a price less than 50 cents per barrel until such time as the conditions can be fully investigated by the Commission, and no common purchaser or other person shall purchase oil hereafter taken from the oil sands of the Healdton field at less than 50 cents per barrel until such time as the Commission can hear and determine the necessities for the less price.

All parties having storage oil are hereby notified that if the same is sold at less than 50 cents per barrel without permission of the Commission after an investigation as to the quality of the oil, same will be prorated against their runs through the pipe lines.

Dated at Oklahoma City, Oklahoma, this 1st day of October, 1914.

[fol. 204] PLAINTIFF'S EXHIBIT 37

No. 37, Record, p. 282

Order No. 846 A (undated, but made during Sept. 1914, No. 847 being dated October 1st, 1914), which reads as follows:

Order No. 846A. Cause No. 2041

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

vs.

MAGNOLIA PIPE LINE COMPANY, a Corporation; OKLAHOMA Pipe Line Company, a Corporation; Gulf Pipe Line Company of Oklahoma, a Corporation; The Texas Company, a Corporation, and Prairie Oil & Gas Company, a Corporation

SUPPLEMENTAL OPINION AND ORDER TO ORDER No. 846

Appearances: For Complainants, Chas. West, Attorney General. For Oklahoma Pipe Line Company, Nate Gibson; for Gulf Pipe Line Company of Oklahoma, J. B.

Diggs; for the Texas Company, C. B. Ames; for Prairie Oil & Gas Company, W. S. Fitzpatrick.

After two days hearing of the conditions attending the production of oil and the situation generally in Oklahoma, the Commission has arrived at the conclusion that no substantial relief can be given by any power or authority without a reasonable limitation of the production; that is, protecting one producer against the other. He may be forced to drill as set forth in our former opinion, and until a reasonable minimum price of 75 cents per barrel for oil can be obtained, oil should not be produced in quantities in excess of the reasonable market demands.

Owing to the cause of the condition of many wells and prior arrangements, no order conserving the oil in the ground can be immediately put into practical effect but must be done in a gradual reasonable manner. The oil producers of Oklahoma are now facing a condition that must be looked upon as a whole. In other words, if one individual owned all the oil properties of the state with all the obligations to meet and all the details of the business to be operated, and found himself circumstanced as the view of the situation appears as a whole, what would be the business judgment of this individual? He would doubtless pursue a course of limiting the production and in the meantime would dispose of the oil at the immediate demands until his business was shaped so he could put him- [fol. 205] self in a more independent condition. In our judgment this can likely be brought about within the next few weeks.

It is therefore ordered, no more wells shall be drilled into the oil sands within the State of Oklahoma without first obtaining permission of the Commission; that a plan will be immediately outlined to limit the production of the present producing wells in such manner as may be practical and will produce the least injury to the producing properties. No well shall be squibbed or shot without first obtaining the permission of the Commission.

The pipe lines are hereby relieved as common purchasers from taking any oil as common purchasers from any wells drilled into the oil sand or any producing wells squibbed or shot in violation of this order.

The order issued by this Commission on the 22nd day of September, 1914, fixing the price at which oil could be produced and at which it could be purchased at 65 cents, is temporarily suspended until further order of the Commission, and no corporation, firm or individual shall take oil from the oil sands of Oklahoma when same cannot be sold at a price not less than 55 cents, and no individual, firm or corporation shall purchase oil in Oklahoma at a less price than 55 cents until further order of the Commission.

The details and plan of limiting production will be prescribed by supplemental orders of the Commission from time to time as the circumstances may justify.

The Commission will hear all minor applications for exceptions to the order informally, and should an application be made that would involve any change of the general plan, it will be handled by the Commission formally and all parties notified.

[fol. 206] PLAINTIFF'S EXHIBIT 38

Order No. 844 (undated, but made during September, 1914, Record p. 283), which reads as follows:

Cause No. 2041

In re the Matter of Fixing the Price of Oil Bought by Common Purchasers in the State Having Pipe Lines

THE MAGNOLIA PIPE LINE COMPANY, a Corporation; THE Oklahoma Pipe Line Company, a Corporation; The Prairie Oil and Gas Company, a Corporation; The Gulf Pipe Line Company, a Corporation; The Texas Company, a Corporation.

TEMPORARY ORDER No. 844

The State of Oklahoma, by the Attorney General filed an application before the Commission stating that the State had been notified by the Prairie Oil and Gas Company that it, the Priarie Oil and Gas Company, would reduce the price of crude oil in the State of Oklahoma within five days from the date of said notice, and said notice was dated on the 5th day of September, 1914. The petition prays that the

Commission issue a temporary order preventing the reduction in the price of crude oil by the Prairie Oil and Gas Company until such time as the matter can be heard before the Commission.

It is hereby ordered that the Prairie Oil and Gas Company, the Gulf Pipe Line Company and the Texas Company shall not reduce the price of crude oil below seventy-five (75) cents per barrel until such time as the matter can be heard before the Commission.

It is hereby ordered that this case be set for hearing at any time within one day after request for the case to be set by either of the above companies.

[fol. 207] PLAINTIFF'S EXHIBIT 39

No. 39, Record p. 283

Order No. 846, dated Sept. 22nd, 1914, which reads as follows:

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

vs.

MAGNOLIA PIPE LINE COMPANY, a Corporation; OKLAHOMA Pipe Line Company, a Corporation; Gulf Pipe Line Company of Oklahoma, a Corporation; The Texas Company, a Corporation, and Prairie Oil & Gas Company, a Corporation

Order No. 846

Cause No. 2041

In re Supplemental Petition

The Attorney General has filed a supplemental petition styled, In re Fixing the Price of Crude Oil Bought by Common Purchasers in the State, Having Pipe Lines. The petition alleges, in substance, that an agreement was entered into between the Attorney General and the common purchasing pipe line companies, by which the Attorney General was to be notified five days in advance of any

reduction from the prevailing prices, to-wit: Fifty cents in the Healdton field and seventy-five cents in the northern field of Oklahoma; that the Attorney General has received notice from the Prairie Oil & Gas Company, dated the fifth day of September, 1914, that the price of seventy-five cents per barrel would not be maintained by them.

The petition prays that the Commission issue an order prohibiting the Prairie Oil & Gas Company from reducing the price of oil in the State of Oklahoma below seventy-five cents per barrel. The case was set for hearing September 15th, at which time it was continued to September 28th, so that in the meanwhile the Commission could issue a tentative order which may go into effect subject to any modification that may be found to be necessary at that time.

The maintaining of the price by law of a commodity is the application of an old precedent to modern conditions. Public authority has regulated prices in instances when the source of supply was controlled by monopoly or when the [fol. 208] business was of such monopolistic character that the sovereign power was invoked and exercised in protecting the public's welfare. In Oklahoma there is a statute conferring jurisdiction upon the Commission to regulate the practices, prices and services of any corporation or person engaged in a business having a virtual monopoly and dealing in a commodity which the public must use. Under this law the Commission has regulated the schedule of prices of persons engaged in the manufacture and sale of commodities, when such transactions were executed within the domain of the state.

Crude oil is a commodity that is produced throughout all parts of the world. It is found underneath the surface of the ground in pools or strata and the production therefrom is not uniform. For a period the production will decrease rapidly; suddenly a new pool of oil is found and the production in localities greatly exceeds the transportation facilities, while at the same time the total production throughout the country may not be greatly increased and in other sections of the country there may be a corresponding decrease. The producer of oil is practically helpless as to the number of wells he may drill or the amount of oil he may produce; oil either being in a common pool or flowing beneath the ground may be taken not only from the owner of the land upon which the well is located but may,

through this opening, be extracted from other lands, hence the owners of adjoining properties must drill an equal number of wells along either side of the line separating the two properties, and if the wells are kept flowing on one property, the other must be kept flowing in order that each may extract from the ground their reasonable pro rata of the oil. Gas is like oil in this respect, while in the mining of coal, if the market conditions are such that the coal cannot be produced at a profit the mine may be temporarily [fol. 209] closed, so long as the public may not suffer thereby. The oil producer cannot do this without the cooperation of all producers on adjoining properties or in a common pool or stratum. He is powerless, hence the oil must be produced whether he can get seventy-five cents per barrel, fifty cents per barrel or ten cents per barrel. He has made his investment and if he does not take the oil from under the ground, his neighbor may.

The price of a commodity uninfluenced by combinations or monopolies, should, and would be governed by commercial and economic conditions.

It has been claimed for the past twenty years that not only the price of crude oil, but the price of refined products has not, at all times, been based upon natural or commercial conditions, but that the same has been influenced to some extent by the Standard Oil Company, and its affiliated concerns. However this may be, the Commission is of the opinion that an order fixing the price of oil in the sense of determining what the market conditions would justify may be impracticable with the limited information before the Commission.

The theory of maintaining the price of oil by State authority has been subject to misunderstanding by the public. It is doubtless the law that individuals may barter and sell to one another such commodities as they possess at such prices and upon such terms as may be agreed upon. The intention to interfere with this liberty to contract, as is known to the law, has never been contemplated by this Commission, nor by even the statutes conferring authority upon the Commission.

Before a sovereign authority should be exercised to interfere in the making of the price of a commodity, there should exist a virtual monopoly with the power to arbitrarily fix prices and conditions upon which such property

is sold. No more apt illustration can be afforded than that [fol. 210] presented by an oil pipe line penetrating an oil field and furnishing the only practical market for the crude petroleum which has been brought to the surface under conditions heretofore described. Under such conditions of sale of crude petroleum no contractual relations actually exist as are contemplated by the Constitution of the United States. One of the fundamental elements necessary to a contract is that the minds of the contracting parties must meet. There is no meeting of the mind and no actual freedom in agreement by such sale. Hence, the taking of a commodity under such circumstances and at less than its value or less than the commercial conditions would justify, is the arbitrary enforcement of an advantage which in fairness should not be permitted. A sale or taking under these conditions may properly be characterized as a species of extortion. The State under its police power has authority to prevent extortion in any form, and hence, when the term fixing price is used in connection with the exercise of the authority of the Commission, it is not in fact a proper recognition of what fixing a price means to the commercial world. It is simply the State exercising its police power to prevent extortion. This principle is not new. It has been conceded for centuries that banks could be limited in their contracts to the amount of interest they could charge the user of their money. The same right to contract between the borrower and lender has always existed as to the transactions, yet, it is so apparent that the banker with the money of the community collected in his bank and there being individuals who must use it, the banker has an advantage that could be exerted to extort from the borrower an unreasonable interest. The State has prevented this practice in both the private and public loaning or money and the attempt to maintain an existing price of a commodity is the exercise of a similar authority and is but the application of that principle.

[fol. 211] In the case of the German Alliance Insurance Company v. Lewis, in Advance Sheets of the Supreme Court Reports of June, 1914, the Supreme Court of the United States, by Justice McKenna, delivered a very exhaustive opinion, dealing with the rights of the State to regulate the making of private contracts.

On page 618 the court says:

"The argument encountered opposing examples, among others, the regulation of the rate of interest on money. The regulation was accounted for on the ground that the act of Parliament permitting the charging of some interest was a relaxation of a prohibition of a common law against charging any interest; but this explanation overlooked the fact that both the common law and the act of Parliament were exercises of government regulation of a strictly private business in the interest of public policy—a policy which still endures and still dictates regulating laws. Against the conservatism of the mind which puts to question every new act of regulating legislation, and regards legislation invalid or dangerous until it has become familiar, government—state and national—has pressed on in the general welfare and our reports are full of cases where instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the Constitution of the United States. The dread of the moment having passed, no one is heard to say that rights were restrained or their constitutional guaranties impaired."

Again on page 621, Justice McKenna further says:

"We may venture to observe that the price of insurance is not fixed over the counters of the companies by what [fol. 212] Adam Smith calls the higgling of the market, but formed in the councils of the underwriters, promulgated in schedules of practically controlling constancy which the applicant for insurance is powerless to oppose, and which therefore has led to the assertion that the business of insurance is of monopolistic character and that 'it is illusory to speak of a liberty of contract.' It is in the alternative presented of accepting the rates of the companies or refraining from insurance, business necessity impelling if not compelling it, that we may discover the inducement of the Kansas statute; and the problem presented is whether the legislature could regard it of as much moment to the public that they who seek insurance should no more be constrained by arbitrary terms than they who seek transportation by railroad," etc.

The purchase of oil is largely conducted with the same advantage and arbitrary power as is the insurance business, which was so logically analyzed by Justice McKenna.

The seller of oil has heretofore had nothing to say as to the price. Circumstances forced him to sell. He has had no other practical alternative. To let his property deteriorate or be drained by reason of his product being a fugitive one is materially the same to the owner as the depletion of his property by fire without insurance. Hence, before the Commission is justified in exercising the authority conferred upon it the following conditions must exist:

First. Monopolistic control must exist such as would practically destroy the liberty of contract.

Second. A commodity must be dealt in which the public must use under modern necessities and business requirements.

Third. A benefit to the public and a correction of the wrong to the individual should result from an order.

[fol. 213] Under the first requirement, what are the facts as to the monopolistic character of the oil business by which the price may be arbitrarily fixed?

Prior to the time pipe lines became common carriers by decree of court the Standard Oil Company and its affiliated companies controlled the greater number of large refineries and the pipe lines reaching the principal oil field of the country. It also possessed almost unlimited facilities for distributing the manufactured by-products taken from the crude. With but few exceptions no one can sell oil direct to the Standard Oil refineries except some subsidiary company which purchased the oil from the producer and transported the same through its own pipe line. It was unsafe and not the part of business prudence for independent refineries to embark in the business along the lines of these pipe lines as business is built up along the lines of railroads, because they had no means of compelling the Standard Oil Company to accept or deliver crude petroleum to or from its pipe line, save upon such conditions and terms as might be offered by the Standard Oil Company.

The difference in the cost of transporting oil through pipe lines as compared with the cost of transportation by rail is so great that the oil transported through pipe lines had a distinct commercial advantage and an average difference in transportation cost in favor of the pipe line throughout the country of approximately fifty cents per barrel, depend-

ing upon the distance transported. This difference was so great that it responded by giving the owners of pipe lines a virtual monopoly of the transportation, manufacture and distribution of crude petroleum and its products. In times past when a crude oil pool was discovered in Oklahoma, some of the pipe lines on a very small tract in or near the center of a pool extracted an undue proportion of the oil from their own properties and refuse to buy oil from other [fol. 214] producers within the same pool. This caused the owners of adjoining properties to sacrifice the same at any price that may be offered. To correct this evil the legislature enacted a law known as the Common Purchaser Act, requiring all pipe line companies to purchase crude petroleum pro rata from all producers in a given field according to the potential production of such producer. The pipe line companies have operated under this Act without contesting the same in the courts, and it now appears to be a fixed principle of law based upon justice and equity. The Common Purchasers Act is only another form of preventing extortion and unfair dealing in requiring the pipe line companies to take oil from all the producers by purchase instead of permitting the pipe lines to take it through wells drilled on their own properties and the common pool exhausted without regard to its fair distribution among the surface proprietors thereof.

It is now insisted that since the pipe lines have been made common carriers that they are open to the public and oil can be transported throughout the country. There would be more force in this argument if the principal part of the large refineries of the country did not belong to the same interests that own and operate the pipe lines.

When market conditions adjust themselves, as to the commodity of oil, and pipe lines sustain the same relation to the public as railroads and refineries are built up at different localities along the pipe line and disassociated from them as industries are established on railroads, the contention that the pipe line companies have now been deprived of their monopolistic character will have much more force.

It is contended that the rates promulgated by the pipe lines for the use of the public are greatly in excess of a reasonable rate, and a committee of experts appointed by [fol. 215] the oil producers have submitted to the Corpora-

tion Commission an estimate which covers the cost of the pipe lines, the depreciation fund of five per cent, interest on the investment at eight per cent, sinking fund of five per cent, and all operating and maintenance costs. This estimate shows that an eight-inch pipe line can transport oil to the Gulf ports on the above basis of expenditures and cost of operating at approximately seventeen cents per barrel. Assuming that the public is charged twenty cents per barrel, the rates now charged by the pipe lines, including gathering charge, is approximately fifty cents per barrel. If twenty cents per barrel is a reasonable charge, the pipe lines still have an advantage of thirty cents per barrel over the independent oil shipper. A similar relation exists upon the transportation of oil to the eastern points, which indicates that the pipe lines have an advantage by reason of the rates promulgated of from thirty to forty cents per barrel.

If the data furnished the Commission is correct, as long — these rates exist, the pipe lines still have a virtual monopoly of the business.

Second. Are the products of crude oil a commodity which the public must use?

We deem it unnecessary to go into an extensive discussion of this phase of the case. While the product of crude oil is a commodity which the public could exist without, yet because of the various uses and machinery and vehicles that have been constructed and are now in operation by reason of the products of oil, that for the public to be deprived of them would be a public calamity. Financial losses and inconveniences to the public could hardly be estimated. In fact, the avenues of commerce could scarcely be operated, at least not without a greatly increased cost to the public. Hence, crude oil and now ten million barrels of surplus pro- [fol. 216] duction of oil stored in the Cushing field the public must use.

Third. Notwithstanding the conditions described above it becomes a question of discretion as to whether or not the Commission should exercise the authority in this particular case.

We are confronted with a condition that will doubtless exist only temporarily, that is, a great pool of oil in what is known as the Bartlesville oil sand in the Cushing field

has been developed, the production of which is greatly in excess of the market demands or the pipe facilities. With the helplessness of the oil producer in materially curtailing the production and holding his oil in the ground until such times as the transportation facilities and market conditions will care for it, he is forced to store it at a cost of approximately thirty cents per barrel, including loss the first six months by evaporation. There are now ten million barrels of surplus production of oil stored in the Cushing field. When the expense on the producer is daily growing heavier, he naturally seeks any available means open to him to dispose of the oil at any price so as to take care of uncontrollable but consequential accruing obligations. Hence, oil has been offered in lots of from 100,000 to more than one million barrels at prices much lower than was being paid at one time by the pipe line companies. In some few instances the difference in the price alleged to have been made represents the cost of steel tankage. Hence, the difficulty of an order resulting in substantial benefit to the public and extricating the producer from the difficulties with which he is surrounded.

Should the Commission find that it would be extortion for the pipe lines to pay less than 75 cents per barrel for crude oil in the Cushing field, without some means of controlling the manner in which oil is taken from the ground, the following may be the result:

[fol. 217] (1) The pipe lines would take only such oil from the Oklahoma fields as they could market profitably at that price. Some few producers of the field may contract their oil at a price to a few scattered refineries and secure an advantage of the available markets for the large portion of their potential production. Other producers, limited to the established agencies of sale at a fixed price, would be cut off from their pro rata of the markets. Hence, those that were fortunate enough to secure these sales at low prices would drain the pool, and therefore take the adjoining property owner's oil or force him to tank the same and hold it in storage indefinitely.

(2) While the pipe line companies are now common purchasers, it is undetermined at this time when or how they may withdraw from the state as common purchasers. It is conceded that they cannot be required to take more oil than

they can market at a reasonable profit. Should they withdraw from the state as buyers of oil, refineries which they are now supplying could purchase oil, making the contract at the point of delivery beyond the limits of the state, and in this way avoid the effect of the order.

It is these last considerations that have given the Commission the great concern and hesitancy in determining what the pipe line companies should pay for this oil to avoid extortion. Unfair dealing and extortion could not be seriously urged when many of the producers are offering their oil at a much less price than the pipe lines are actually paying. This contention would be of great force were it not for the fact of the advantage that the pipe lines have in transportation charges and the principal refineries of the country belonging to the same interests. It is generally conceded that the export market because of the war has been temporarily disturbed, and that for a time the export trade was very much unsettled. We have learned recently [fol. 218] that the export trade is materially improving.

All of these conditions confront the Commission in determining this question. It will not at this time pass upon the question of fixing price on the theory of market conditions and extortion, but will leave the matter open for further consideration of the third requirement, as to the result of the order.

As to the first two questions of the monopolistic condition and that the commodity is one that the public must use, the Commission finds that under ordinary conditions the pipe lines and their affiliated companies have a virtual monopoly and that the commodity is one which the public must use.

Further consideration will be given to the third question on the 28th, and the Attorney General and other counsel for the producers, as well as all other interested parties are now requested to direct their consideration as to how its discretion in this behalf should be exercised in order that they may advise the Commission.

We will next consider:

(1) Can the state regulate the taking of oil from the ground?

(2) If the state can regulate the taking of crude oil from the ground, has authority been delegated to the Cor-

poration Commission to prescribe the rules and regulations?

The authority of a state to prescribe reasonable rules and regulations for taking oil from the ground has been passed upon by the Supreme Court of the United States in the case of Ohio Oil Company v. Indiana, 177 U. S., page 200, where Justice White said:

"Thus it is apparent from the admitted facts that the oil and gas are commingled and contained in a natural reservoir which lies beneath an extensive area of country and that as thus situated the gas and oil are capable of flowing [fol. 219] from place to place and are hence, susceptible of being drawn off by wells from any point provided they penetrate into the reservoir. * * * From this it must necessarily come to pass that the entire volume of gas and oil is in some measure liable to be decreased by the act of anyone who within the superficial area bores wells from the surface and strikes the reservoir containing the oil and gas. Hence, of course, it is certain, if there can be no authority exerted by law to prevent the waste of the entire supply of gas and oil, or either, that the power which exists in everyone who has the right to bore from the surface and tap the reservoir involves in its ultimate conception the unrestrained license to waste the entire contents of the reservoir by allowing the gas to be drawn off and to be dispersed in the atmospheric air and by permitting the oil to flow without use or benefit to anyone. These things being lawful, as they must be if the acts stated cannot be controlled by law, it follows that no particular individual having a right to make borings can complain, and thus the entire product of oil and gas can be destroyed by any one of the surface owners. The proposition, then, which denies the power in the state to regulate by law the manner in which the gas and oil may be appropriated, and thus prevent their destruction, of necessity involves the assertion that there can be no right of ownership in and to the oil and gas before the same have been actually appropriated by being brought into the possession of some particular person. * * * The question here arising does not require a consideration of the matters just referred to, but it is this: Does the peculiar character of the substances, oil [fol. 220] and gas, which are here involved, the manner in

which they are held in their natural reservoirs, the method by which and the time when they may be reduced to actual possession or become the property of a particular person, cause them to be exceptions to the general principles applicable to other mineral deposits, and hence subject them to different rules? True it is that oil and gas, like other minerals, are situated beneath the surface of the earth, but except for this one point of similarity, in many other respects they greatly differ. They have no fixed situs under a particular portion of the earth's surface within the area where they obtain. They have the power, as it were, of self-transmission. No one owner of the surface of the earth, within the area beneath which the gas and oil move, can exercise his right to extract from the common reservoir, in which the supply is held, without, to an extent, diminishing the source of supply as to which all other owners of the surface must exercise their rights. The waste by one owner, caused by a reckless enjoyment of his right of striking the reservoir, at once, therefore, operates upon the other surface owners. Besides, whilst oil and gas are different in character they are yet one, because they are unitedly held in the place of deposit."

The Supreme Court of Pennsylvania carefully considered this same subject in the case of Hague v. Wheeler, 157 Pa., page 340, in which the court said:

"Now it is doubtless true that the public has a sufficient interest in the preservation of oil and gas from waste to justify legislation upon this subject. Something has been done in this direction already by the acts regulating the plugging of abandoned wells. * * * In the disposition [fol. 221] he may make of it (private property) he is subject to two limitations. He must not disregard his obligations to the public. He must not disregard his neighbor's rights. If he uses his product in such a manner as to violate any rule of public policy, or any positive provision of the written law, he brings himself within the reach of the courts."

There are many other authorities to the effect that the public has an interest in the proper preservation of any commodity which it must use. The state has the authority to regulate the taking of oil from the ground so that differ-

ent owners of the land in a common pool or stratum may be protected from the careless or reckless drilling that would injure the common strata of oil in any way or to prevent waste.

The next question is, has the state passed a law delegating authority to the Commission to prescribe the necessary rules and regulations for the taking of oil from the ground? It is conceded that when the owner reduces oil to possession and once has it in storage he may dispose of it according to his wishes. Section 8235 of the Revised Statutes of Oklahoma, 1910, confers all the authority the Commission may have to prescribe these regulations, which reads in part as follows:

"Whenever any business by reason of its nature, extent, or the existence of a virtual monopoly therein, is such that the public must use the same, or its services, or the consideration by it given or taken or offered, or the commodities bought or sold therein are offered or taken by purchase or sale in such a manner as to make it of public consequence or to affect the community at large as to supply, demand or price or rate thereof, or said business is conducted in violation of the first section of this article, said business is a [fol. 222] public business, and subject to be controlled by the state, by the corporation commission or by an action of any district court of the state, as to all of its practices, prices, rates and charges," etc.

The above section is only a declaration of the common law, but is often referred to as part of the Anti-Trust Statute of Oklahoma. While this section is part of the chapter on the regulation of trusts and monopolies, it is only the legislature declaring the common law and conferring upon the Commission jurisdiction to determine the rules and regulations as may be necessary in each particular case. In fact, this has been the law since Moses descended from Mount Sinai; however, at that time there may not have been as many examples as now for the application of the law. A law may be dormant for a thousand years, but as soon as a business condition arises requiring its application it is just as much the law as if it had been in continuous operation.

Each part of this law is co-ordinate and stands alone. The above section is analyzed and separated into parts which are co-ordinate, as follows:

(1) Whenever any business by reason of its nature and extent;

(2) Whenever any business by reason of the existence of a virtual monopoly therein;

(3) Whenever any business affects the community at large as to supply, demand or price or rate thereof, such business is subject to be controlled by the State by the Corporation Commission or by action in any district court of the state as to all of its practices, prices, rates and charges.

Is the oil business by reason of its nature and extent or the existence of a virtual monopoly therein, or does it affect the community at large as to supply, demand or rate [fol. 223] thereof, to bring it within the provisions of the above law?

The conditions under which oil is produced have been described in the first part of this opinion. There are two theories advanced to relieve the condition that now exists. First, to dispose of the temporary over-production in the Cushing pool for any price at which it may be sold. Second, to preserve the oil in some manner by partially closing the wells and only producing enough oil therefrom to supply the present demands at a reasonable price, that the oil may be preserved for the benefit of the owners of the property who do not want to waste the same and of the public at large.

The first proposition means the oil shall be thrown on the market whether it brings 65 cents, 50 cents or 20 cents per barrel; that uses for the same may be created that it may supersede coal for fuel purposes, and that it may be used for sprinkling the streets instead of water from the Arkansas River and other streams. None of the oil producers desire this to be done, but would prefer to produce the oil in such manner as to obtain a reasonable price.

The public becomes interested in the matter, in that this is an extremely high grade oil; in fact, it is among the best oil for refinable purposes in the mid-continent field, the specific gravity of which is more than forty. Gasoline

manufactured from this oil is now being sold at the refinery for 7 cents per gallon, kerosene 2¼ cents per gallon and fuel oil 40 cents per barrel. These are the lowest prices for these products that has obtained in Oklahoma, notwithstanding the oil from which those products were refined sold at 75 cents per barrel. The independent refineries claim they are not making a reasonable profit and should receive 8 cents per gallon for gasoline, 3 cents for kerosene and 50 cents per barrel for fuel oil. The public has never complained at prices even as high as those now suggested [fol. 224] by the refineries they should receive and pay 75 cents a barrel for oil.

Should the oil that is now being produced at Cushing be destroyed in the manner which some, with apparently good business judgment, insist should be done, the prices of gasoline would immediately thereafter advance to 25 cents per gallon to the consumer and kerosene from 10 to 15 cents per gallon and fuel oil 75 cents per barrel. During the period of the destruction of this oil all the other oil properties in the state would be paralyzed, and notwithstanding the great volume of oil that may be produced from the Cushing sand, it would have been better for the oil producers at large had this oil never been discovered, and in fact, the public at large would receive no substantial benefit therefrom.

Anything that demoralizes a whole industry to such an unnatural and unreasonable extent should, in some way, be controlled by public authority. If this oil could be conserved and used as demands may justify, the public could continue to buy gasoline and kerosene at a reasonable price. No individual or half dozen individual oil producers in the Cushing field can control the situation. They are carried along in a whirlpool of production as helpless as a child in mid-stream and cannot prevent the inevitable result. They cannot even protect their own property by holding the oil until such times as market and transportation conditions will properly care for the same. Hence, is the section of the statutes above referred to sufficiently broad to authorize the Commission to prescribe the rules and regulations for the taking of oil from the ground within the State of Oklahoma?

The rule usually invoked by lower courts when in doubt as to law is to give the public the benefit of that doubt and let the Supreme Court finally determine what the law is.

[fol. 225] It is claimed by the Attorney General that should the Commission hold it had no jurisdiction the public would not have further remedy and could not have the law finally determined by the Supreme Court. Conceding that the Commission has jurisdiction to regulate the taking of oil from the ground, the next question that is of moment is, whether or not the whirlpool of production is such at this time that the production of oil can be effectually controlled. It can be done with the hearty cooperation of every producer in the state, yet, this storm of production has grown to such an extent that there are many producers who may be forced to consider their own financial condition instead of the public interest.

There are ten million barrels of oil now stored in the Cushing field, the deterioration of which will range from ten to twenty-five per cent the first year, hence this is from two to two and a half million barrels of oil destroyed by this process. Many barrels flow down the creek and are destroyed in various ways. Can not the state come in and stop this waste of a product which it must use? When a barrel of oil is destroyed it can never be reproduced. If a crop of an agricultural product cannot be sold for its value this would not be of such great moment to the public because another crop can be raised. Had not oil been discovered in Oklahoma we would doubtless be paying from 40 to 50 cents per gallon for gasoline, but with the discovery of oil in Oklahoma many independent refineries have been able to exist and we are now enjoying the lowest prices for the refined product in the history of the world.

Shall the public sit idly by and see this commodity destroyed, not knowing but that this is the last great oil field on this continent, and let plan of destruction be carried out? Our judgment compels us to say no. Hence, what shall be the standard to determine waste? It is cer- [fol. 226] tainly waste to store large quantities of oil where it loses one-fourth of its value within a short period of time. It would be waste when we consider the great interest the public has in this commodity; it would be waste during a temporary production in excess of the market or pipe line facilities to sell same so it may be for uses of no greater value than 10 cents per barrel. Would it be abuse of discretion for the Commission to use the price of oil as a standard to measure waste? If it can use 10 cents per barrel as a

standard it may use 20 cents. It is our conclusion that oil of the gravity and grade of the Cushing oil and the average oil of Northern Oklahoma should not be taken from the ground at a time when it could not be sold at a minimum price of 75 cents per barrel, hence 75 cents per barrel will be the standard now adopted by the Commission, and any oil taken from the ground under conditions and circumstances that would not produce 75 cents per barrel, will be considered as against public policy and against the best interests of the state. The Commission cannot issue an order preventing the common purchasers from paying less than 75 cents per barrel for oil unless the oil can be retained in the ground until the market conditions justify the taking of it therefrom.

It is hereby ordered, that all producers shall not take more oil from their wells than can be sold upon the market at 65 cents per barrel, or stored in regulation steel tankage, until the first day of October, 1914; that the rules and regulations for the curtailing of production will be considered by the Commission at the hearing on September 28th, at which time it will be determined how long the price shall continue at 65 cents per barrel, with a view of raising the same to 75 cents per barrel, the basis of which the Commission has found to be just to prevent waste. The Commission will also consider rules and regulations with reference to storing oil with a view of limiting the storing to a mini-
[fol. 227] mum amount.

It is further ordered, That no common purchaser or other purchaser of crude oil in the state of Oklahoma shall buy oil at a price less than 65 cents per barrel until further ordered by the Commission.

For the hearing of September 28th, the Commission suggests that the business interests, including the oil producers as well as other affiliated interests, give full consideration to the plan outlined, that is, the curtailing of production to the reasonable market demands and in what manner this can best be done, that the Commission may have the benefit of their business judgment. The Commission can give but little consideration to opinions based upon self interests alone, but invites a consideration of the subject from a broad public and business standpoint with that iron will of determination that characterized Andrew Jackson.

In witness whereof, we have hereunto set our hands and affixed the seal of the Commission this, the 22nd day of September, A. D. 1914.

[fol. 228] PLAINTIFF'S EXHIBIT 40

No. 40, Record, P. 283

Order No. 1023, dated February 18th, 1916, which reads as follows:

Order No. 1022. Cause No. 2381

In re STATE OF OKLAHOMA, by S. P. FREELING, Attorney General,

vs.

CORSICANA PETROLEUM Co. et al.

Appearances: S. C. Matson and Judge Johnson for the state. G. C. Greer, A. C. Cruce, and R. A. Hefner, for the Corsicana Petroleum Co.

FINDINGS OF FACT, OPINION, AND ORDER

By the COMMISSION: Complaint in this case was filed by the State of Oklahoma on relation of the Attorney General under Sec. 2, Chap. 25, of the Session Laws of 1915, and in substance alleges:

First. That the Corsicana Petroleum Co. and many other persons, firms and corporations are engaged in the production of crude petroleum in the Healdton oil field, which field has a production of approximately 80,000 barrels a day which may be greatly increased by additional drilling.

Second. That the amount now being produced is greatly in excess of transportation and marketing facilities, and in excess of the market demands, thereby causing great economic waste.

(a) That because of said over-production, the reasonable market value of said oil is not being paid and cannot be obtained so long as such large quantities of oil are pro-

duced at a price far below its intrinsic value and lower than other similar oils in the United States.

(b) Because the Magnolia Pipe Line is at present the only means of transporting said oil to other markets beyond the state, that its rates as a common carrier are excessive and prohibitive and by its use great economic waste is incurred to the producer in the state.

[fol. 229] (c) Because throughout the oil producing territory of the United States, and what is known as the Mid-Continent field, the price of crude oil has increased as much as 100 per cent within the last ninety days, while the price of oil in the Healdton field has only been raised 5 cents per barrel; that the relative value of said crude oil is only slightly different; that formerly the price of Cushing and other oils in Oklahoma was 40 cents per barrel; Healdton, 30 cents per barrel; that now the Cushing and other oils in Oklahoma are selling at 80 cents per barrel and Healdton oil at 35 cents per barrel; that all the by-products have enhanced in value, and gasoline, one of the products of the Healdton oil, has enhanced 50 per cent in value.

Third. That the present intrinsic value of Healdton oil as compared with the value of other similar oils in the State of Oklahoma is 55 cents per barrel.

Fourth. That the production of crude oil has recently been greatly reduced, caused by the exhaustion of oil fields, and that the demands of by-products are in excess of the production, which should enhance the price of the Healdton crude oil much beyond the present price; that by permitting said oil to be taken from the sand at the present prices is an economic waste, as defined by law.

Fifth. That some of said producers are willing to dispose of their crude oil at the price of 30 cents per barrel, while others object because of the inadequate price, but are forced to sell at that price to protect their interests in said common pool of oil against the taking by others who persist in draining the pool; that the Corsicana Petroleum Company is the producing company of the Magnolia Petroleum Company, which the state alleges owns the property of the Magnolia Pipe Line Company, all three

of said companies being in fact one and the same, and under the same management; that the said Corsicana Pe-
[fol. 230] troleum Company has a large production of crude oil in the Healdton field scattered throughout the field, and can force and does force every producer adjoining its property to accept any price fixed by the Magnolia Petroleum Company or lose its pro rata share of the oil in the common pool, and thereby enables the Magnolia Petroleum Company not only to fix the price without regard to value of crude oil, but compels adjacent producers to produce crude oil in self-protection, which forces others adjacent to them to do likewise until the whole field is coerced to accept any price fixed by the Magnolia Petroleum Company, and is aiding and abetting said Magnolia Petroleum Company in extorting crude oil at a confiscatory price from the other producers.

Sixth. That some producers are placing oil in steel storage and others are preparing to do so. That this aggravates the situation as the small producers are unable to furnish storage. These producers unable to store oil will be compelled to accept any price or lose their pro rata of oil from the common pool, thereby causing great economic loss.

Seventh. That the only equitable remedy to conserve the interests of the state and producers is to only permit the production from oil bearing sands in the Healdton field of such quantities of crude oil as will supply the transportation and market demands therefor, when a minimum price is paid to all producers as may be fixed by the Commission from time to time, taking into consideration the relative value of said oil with other similar oils having a competitive market for same.

Eighth. That the state receives a gross tax upon the value of crude oil amounting to 2 per cent, and is interested in having a fair price paid for same, and prays that the decree be rendered securing the state and the owners of oil production the protection contemplated by its laws; that extortion be prevented by fixing a minimum price at which said oil must be sold for before its production will be per-
[fol. 231] mitted and for such other relief as the Commission may in its judgment deem proper in the premises.

No formal answer was filed by any of the defendants.

Sec. 2 of Chap. 25 of the Session Laws of 1915 reads as follows:

"That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this state is hereby invested (vested?) with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the state."

The Commission in Cause 2041, Order 846, held that it was impracticable to fix a price of oil based upon market or commercial conditions. It further held that the only theory upon which the state could fix the price of a commodity was to prevent extortion, upon the same theory and under the same law and same constitution that the price for the loan of money is fixed by statute.

[fol. 232] It is universally conceded that the state may fix a reasonable price that the lender shall charge the borrower for money on the assumption that the lender may have an advantage of the borrower and override him and charge him an extortionate rate of interest. If the purchasing party of crude oil had available markets and pipe lines, it could put the price of oil to 3 cents per barrel and force common owners of a pool to sacrifice their oil at that price. If such practices are extortion, there is no contract between the buyer and seller. Their minds did not meet and such practices or extortions are subject to regulation by state authority.

While the Supreme Court of the United States has repeatedly held that the state may regulate the production of oil equitably between the different producers who have a right to take from a common pool, it has also held in the case of Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, that:

"It does not take from the surface owner the right to cap the underground rock and to draw from the common supply, but consistently with the continued existence of that right so regulates its exercise as reasonably to conserve the interests of all who possess it. That the state consistently with due process of law may do this is a necessary conclusion from the decisions of the case cited. (Referring to Ohio Oil Co. v. Ind., 177 U. S. 190.)"

In Order No. 846, the commission was acting under Sec. 8235 of the Revised Statutes of Oklahoma, 1910, which gave the Commission jurisdiction to regulate the prices and practices of all parties dealing in a commodity which the public must use. In that case it was held that where a pipe line or common purchaser had a virtual monopoly that it was an unfair practice for one producer to make [fol. 233] his neighbor produce oil at 10 cents a barrel and under the conditions as then existed it was an unfair practice and virtual waste to produce Cushing oil at a time when it was worth less than 55 cents per barrel. This order was in force and effect and obeyed by all common purchasers until after Chap. 25, above referred to, was enacted. Chap. 25, Session Laws of 1915, specifically prescribes the jurisdiction of the Commission for fixing the price of the commodity. It does not give the Commission jurisdiction to fix a price based upon extortion or waste, but prescribes the conditions upon which the Commission may fix a price for crude oil.

The Commission finds the evidence in this case to be insufficient upon which to base a conclusion as to the value of crude oil based upon the selling price of refined products. At the time the complaint was filed, oil in the Healdton field was selling at 35 cents per barrel. It is now (outside of the record) selling at from 75 cents to $1 per barrel. The by-products fluctuate in price, whether because of increased demand or because the price may be influenced

by monopoly may not in all instances be easily determined. If the price of the by-products should be advanced at some time when the demand was greater than others, under the theory of this law the price of crude oil would be advanced, and it would make it impossible to reduce the price of the refined product, and have the effect of increasing the refined products to the consuming public, when the relation between the crude oil and refined oil was established by the Commission, if such a thing were possible.

Without going into all the details of the evidence with reference to the realtive value of the Healdton oil with other oils, we are of the opinion that the fixing of a price of crude oil under Sec. 2 of this act is absolutely impossible and impracticable. The complaint is therefore dismissed.

Oklahoma City, Oklahoma, Feb. 18, 1916.

[fol. 234] PLAINTIFF'S EXHIBIT 41

Filed in Supreme Court of Oklahoma Aug. 28, 1930. Jessie E. Moore, Clerk.

No. 41, Record, p. 284.

Transcript of Proceedings in C. C. Julian Oil & Royalties Co. v. Fred Capshaw et als., No. 21640, Oklahoma Supreme Court Reports, Vol. 145, page 237; also 292 Pacific page 841:

(a) Petition for Writ of Prohibition:

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 21640

C. C. JULIAN OIL & ROYALTIES COMPANY, Petitioner,

vs.

FRED CAPSHAW, E. R. HUGHES, and C. C. CHILDERS, Corporation Commissioners of the State of Oklahoma, Respondents

PETITION FOR WRIT OF PROHIBITION

Comes now, C. C. Julian Oil & Royalties Company, petitioner herein, and respectfully represents and shows to this Court:

1

Your petitioner, C. C. Julian Oil & Royalties Company is a business trust organized and existing under and by virtue of the laws of the State of Oklahoma; and that the respondents, Fred Capshaw, E. R. Hughes and C. C. Childers, and each of them are resident citizens of Oklahoma County in the State of Oklahoma, and are duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma, and as such constitute the State Corporation Commission of the State of Oklahoma.

2

That heretofore and on or about the 24th day of July 1930, the respondents herein purporting to act as the Board of Corporation Commissioners of the State of Oklahoma made and entered of record in the Corporation Commissioners office a certain order number 5246 which order is a new order entered in place of order under date of June 30, 1930, a copy of which purported order is hereto attached, marked Exhibit "A" and made a part hereof, and its predecessor order made Exhibit "B" hereto.

3

That your petitioner herein was not a party defendant or plaintiff in said matter and no service whatsoever was [fol. 235] had in said matter upon the petitioner herein, and that no notice whatsoever was given to your petitioner herein of the pendency of said action or of the intention to make or enter said order, and said order and the preceding order thereto was entered herein wholly without notice to this petitioner.

4

That in said order the respondents herein purported to find that the potential production of crude oil in the State of Oklahoma has increased 1,400,523 barrels per day while the reasonable market demand has decreased from 650,000 barrels to 550,000 barrels per day, a decrease of 100,000 barrels in the daily average demand from June 30, and it is further found therein that it is therefore necessary to further curtail the output of crude petroleum in Oklahoma.

5

That in said order it was further provided that all purchasers or carriers of oil in the State of Oklahoma be and they are forbidden to purchase or carry oil produced in violation of the orders of the commission, but in said order no pro rata distribution of any deduction in allowable crude as between the many fields in the State of Oklahoma was made, but arbitrary ratios of allowable was made for the assigned reason that there was an overproduction of crude in the United States and if some conservation be not made in Oklahoma some of our sister states might produce crude in excess of their local demands, and that the industry might be demoralized; and said respondents on said purported grounds made each of said orders and not to prevent waste.

6

That C. C. Julian Oil & Royalties Company is the owner of oil and gas leases in Oklahoma County in the State of Oklahoma, in what is hereafter spoken of as The Oklahoma City field on the following described property to-wit:

Lots 46, 47 and 48 of Block 2 of Carrico's Subdivision of Block 1 of Magnolia Heights Addition to the City of Oklahoma City, Oklahoma;

and that the C. C. Julian Oil & Royalties Company has spent more than $100,000.00 in the acquisition, drilling and development of the said lands for oil and gas purposes and [fol. 236] is now the owner of an oil well on said lots; that the said well has been drilled to a depth of approximately 6600 feet, and now has a production of more than five thousand barrels of crude oil per day; that the respondents herein and each of them have no right, title or interest in and to the said lands or said leases or the said oil well or the production of oil therefrom.

7

That C. C. Julian Oil & Royalties Company is also the owner of other wells in the State of Oklahoma which it is drilling or has drilled and has spent large sums of money in prospecting same for oil and gas.

8

That the said C. C. Julian-Oil & Royalties Company has expended large sums of money and is employing a large number of workmen in the work of producing, transporting and preparing to refine the said oil produced from the said well hereinabove described and other wells, and said orders have resulted in the discharge by the various operators of a large number of employes.

9

That in all directions from the lands hereinabove described and surrounding the same is an oil field with more than one hundred producing oil wells therein; and that the greater portion of the said lands and oil and gas leases thereon are owned by divers and sundry persons, the names thereof being unknown to the plaintiff herein.

10

That serving the said oil field as hereinabove described are a large number of pipe lines, and railroads, which pipe lines and railroads are now and have for more than twelve months next prior to the filing of this petition been engaged in transporting the said oil from the said field to divers and sundry points and places outside of the State of Oklahoma; and said pipe line companies and railroads are now and have heretofore been engaged in Interstate Commerce in transporting said oil from said field.

11

That a large number of the owners of the oil wells in the said oil field as hereinabove stated heretofore and prior to the 24th day of July 1930, combined together and entered into a certain agreement wherein and whereby it *it* was [fol. 237] agreed that the said parties would and they did thereby form a combination in the form of a trust or conspiracy and then and there agreed among themselves that they would cause to be taken such action as would restrain the amount of oil shipped in the said railroads and pipe lines in intrastate and Interstate Commerce aforesaid and it was then and there agreed among them that a certain Operators' Committee should be formed, it being agreed among the said owners at such time that the said operators

would determine the amount of oil which could be produced by each and every operator in the said oil field and the amount of oil which should be run through the said pipe lines, the agreed purpose of the formation of said Committee being to restrain and withhold a portion of the commerce and trade through and from the State of Oklahoma and to the several states of the United States.

12

That thereafter and on the 24th day of July 1930, the said Operators' Committee appeared before the Corporation Commission of the State of Oklahoma composed as hereinabove alleged and there at said time petitioned the Corporation Commission of the State of Oklahoma to take jurisdiction of said action for the purpose of restraining the trade among the several states acting under the guise of House Bill No. 168, Session Laws 1915 of the State of Oklahoma.

13

That thereupon the Corporation Commission of the State of Oklahoma on July 24, 1930, entered its certain order No. 5246, a true copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

14

That in the said order the said defendants, the Corporation Commission as aforesaid found as a matter of fact that it was necessary to curtail the output of crude petroleum in the State of Oklahoma; and that the said oil field as hereinabove defined should only be permitted to produce eighteen and three-fourths per cent of the potential production therefrom; and the said Corporation Commission further found that the reduction of permitted percentages of potential production should be made flexible so that should the demand for Oklahoma crude petroleum increase prior [fol. 238] to August 31, 1930, the percentage of reduction therein set forth might be reduced upon application of the umpire supported by evidence; the said umpire being an employe of the said Corporation Commissioner of the State of Oklahoma; and that in said order it was further pro-

vided that, all purchasers and carriers of oil in the State of Oklahoma be and they were thereby forbidden to purchase or carry oil produced in violation of said orders; and in the said order it was provided that when in the judgment of the umpire or of the said Operators' Committee as hereinabove set out that any supplemental or ancillary order shall become necessary the facts supporting the necessity therefor and the reasonableness thereof shall be reported to the Commission for approval.

15

That after the making of said order aforesaid the said umpire and the said Operators' Committee acting together and by agreement between the said umpire and the said Operators' Committee hereinabove named, it was agreed that no persons should be allowed to produce oil in said oil field of more than eight and one-thirds percent of the amount which any well or wells would produce at full capacity and the said Operators' Committee and the said umpire demanded of this petitioner as the operator of said well aforesaid that he not produce the same more than eight and one-thirds days out of every one hundred days; and that for the ninety-one and two-thirds days the well should be comp-etely shut in and not allowed or permitted to produce any oil whatsoever; and said operators in a meeting held at the Commerce Exchange Building in Oklahoma City on August 21st, 1930, agreed to cause the production to be further reduced to five per cent of potential.

16

That under the agreement aforesaid between the respondents, Corporation Commission of the State of Oklahoma and the Operators' Committee it was agreed between the said Operators' Committee and the Respondents, Corporation Commission that the said Operators' Commission should be permitted to determine the necessity of the production of oil in the said field aforesaid and other fields in the State of Oklahoma; and that the said Corporation Commission would under the guise of the statutes aforesaid pass such orders and resolutions as was necessary to carry out the wishes of the said Operators' Committee.

[fol. 239] 17

That this plaintiff did not participate in the said meetings nor were they parties thereto, and are not now and have never been represented in the said Operators' Committee.

18

That the said Operators' Committee and each and all of the parties to said agreement by whom the said Committee was appointed are each and all owners of large and diversified oil and gas holdings in the State of Oklahoma, and own and control a large amount of crude production outside of the Oklahoma City field as hereinabove described and located in other counties of the State of Oklahoma and in other States of the United States.

19

That under the purported order of the aforesaid Corporation Commission it is provided that eighteen and three-fourths per cent of the total production of the Oklahoma City field should be allowed; that the Operators' Committee and the said umpire arbitrarily and without right changed said percentage of eighteen and three-fourths per cent to eight and one-third per cent; and have agreed among themselves to reduce same to five per cent; and that under the said order in sixteen other fields in the State of Oklahoma it was provided that they might produce fifty per cent of their oil; and in two fields it was provided that they might produce twenty-five per cent of their oil; and in five fields it was provided that they might produce eighteen and three-fourths per cent; and that thereafter the said Operators' Committee cut the percentage of allowable production in the Oklahoma City field to eight and one-third per cent.

20

That there are many oil fields in the State of Oklahoma which are now producing the full amount of oil which could be produced therein and the respondents, Corporation Commission of the State of Oklahoma has never at any time attempted to require proration in said other fields other than those included in the order hereinabove mentioned, and

that many fields are producing one hundred per cent of their potential production.

21

That each, and every and all of the oil fields of the State of Oklahoma are permitted to produce more oil than the [fol. 240] Oklahoma City field, some fields being permitted one hundred per cent and none other than Oklahoma City being reduced as low as eight and one-third per cent.

22

That under color of the said pretended order, the respondents herein are threatening to and will unless restrained by this Court deprive these plaintiffs of the use of their said property and of their management and control thereof and of the proceeds thereof and under color of said pretended order will partially if not wholly destroy the properties of these plaintiffs.

23

That under the color of said statutes of Oklahoma, the respondents are attempting to delegate to an unofficial body, to-wit: said umpire and said Operators' Committee, the right to legislate and make rules and regulations for the conduct of a legitimate business, and said respondents and said Umpire and Operators' Committee are now and have for a long period of time discriminated against a portion of the producers in said field, and are now permitting a part of said operators to produce their wells at a far greater percentage than the eight and one-third per cent which they have demanded that these plaintiffs produce their wells, and are permitting production in other fields far in excess of allowable under said order.

24

That said order of said Commission was adopted in an Ex parte hearing before said Corporation Commission and in pursuance of the agreement which had theretofore been reached between a portion of said operators and was adopted without notice thereof to these plaintiffs and others interested, and has never been published in a newspaper in this State, and in said orders said Commission attempts to

retain jurisdiction to enter additional orders without notice and Exhibit "A" hereto was so adopted.

25

That the Corporation Commission of the State of Oklahoma in the said order and in the actual practice of apparently attempting to enforce the said so-called proration order have delegated to the said umpire and to the Operators' Committee the right to make orders as to proration, to increase or decrease the allowable percentage of production and to instruct the said pipe lines and railroads engaged in Interstate Commerce who they shall take and purchase oil from or run through their pipe lines or over their [fol. 241] railroads, and the said Operators' Committee and the said umpire did make a rule or order reducing the allowable percentage in the Oklahoma City field from eighteen and three-fourths per cent to eight and one-third per cent and have demanded of these plaintiffs that they comply with said order.

26

That said Committee and said umpire have instructed the pipe lines and railroad companies engaged in Interstate and Intrastate Commerce in running of said oil from said field to refuse to purchase from or run through or over its lines any oil in Intrastate or Interstate Commerce from any operator who produces his well more than eight and one-third per cent of its production.

27

That there is a market demand at the well and wells of these plaintiffs at a price equivalent to the actual value of such crude oil, and there is a market demand for such production at such wells for the total production thereof of a value equal to the average value in the United States at retail of the by-products and refined products of such crude oil less the cost and a reasonable profit in the business of transporting, refining and marketing the same; and that these plaintiffs have not permitted waste in any manner either in its ordinary meaning or economic waste, underground waste or surface waste; that crude oil is now and has been for many months been produced in said field in far less quantities than can be cared for by the transporting and marketing facilities and market demand for such oil.

28

That in the said order of the said Corporation Commission it is not provided how the said wells in the said fields shall be prorated and the question of how the wells shall be prorated is left entirely to the discretion and demands of the Operators' Committee and said umpire in said field; that in a majority of the fields of Oklahoma the Corporation Commission has by order provided that oil wells may be permitted to flow all days but shall be pinched in the required percentage and only permitted to flow that pro rata of the potential production that is permitted under said order but said Operators' Committee and said umpire in the said Oklahoma City field have refused to permit the pinching in of said wells in said field and have and are demanding that plaintiffs shut their wells down for ninety-one and [fol. 242] two-thirds days out of each one hundred days and open the same up for eight and one-third days out of each one hundred days.

29

That in the Oklahoma City field the oil bearing strat- is of lime stone and sand and in the wells of these plaintiffs oil is being produced out of the strata of lime stone and of sand; that the sands in the wells of these plaintiffs is of very tight hard sand and the lime formation in the wells of these plaintiffs is very hard and of tight formation; that the oil being produced through the said sand and through the said lime is produced through channels or crevices in the said formation; that the oil being produced from the wells of these plaintiffs and in the said Oklahoma City field is of a paraffin base; that if said wells be shut down for any considerable period of time the lighter volatile oils in the said crude petroleum will leave the said paraffin base and the paraffin base will settle into the crevices and channels of the said sand and lime formation and will partially or totally clog the same and the production thereafter in said well will be greatly decreased, if not wholly stopped.

30

That in addition to the said orders for the production of said wells the said Operators' Committee and the said umpire have demanded of these plaintiffs that they shut their wells in completely and not produce the same at all for a

period of sixty-five days after the bringing in of said wells; the said wells being permitted to produce only for a period of twenty-four hours after being brought in and then being required to be shut in completely for a period of sixty-five days, and that too without regard to the dangers incident thereto.

31

That surrounding the properties of these plaintiffs are certain offset producing wells belonging to others in the said field and said offest wells were placed on production long prior to the time of the drilling in of the wells of these plaintiffs; and that if the wells of these plaintiffs are shut down for a sixty-five day period the offset wells to the wells of these plaintiffs during the said period will be permitted to [fol. 243] produce at full capacity for five days; that there is a very heavy gas pressure in said field and in the strata under and surrounding the property of these plaintiffs and if the offset wells be permitted to produce for five days while the wells of these plaintiffs are shut in there will be open channels and crevices in the oil bearing strata underlying said land and leading to the wells offsetting the wells of these plaintiffs, and that during said period of five days such channels in and to adjacent and offsetting wells will become clearly defined and will create such drainage channels that a great portion of the oil underlying the leases of plaintiffs will be drained from the lands from these plaintiffs and over and onto the surrounding lands and the oil coming from under the lands of these plaintiffs will be produced through and become the property of the owners of such adjacent wells; and that after such channel or drainage area has become well defined and the channels leading to the wells of these plaintiffs in said strata have become clogged, thereafter the said surrounding properties will be permitted and will recover a much larger percentage of the oil from the drainage area than would otherwise be recovered by them if all of the wells were permitted to produce at one and the same time.

32

That after the drainage area in an oil bearing strata be determined by the opening of the oil channels through the same in any certain direction to the offset wells, thereafter placing a well upon production in said area will not over-

come said well defined channels and the wells to which said well defined channels lead will recover a much larger percentage of the oil out of the common producing strata than will the last named well.

33

That the defendants herein and said Operators' Committee and the said umpire have demanded of these plaintiffs that their wells be immediately shut down for sixty-five days after bringing the same in and that thereafter the said wells be shut down for ninety-one and two-thirds days out of each one hundred days succeeding and the said defendants and each of them herein have threatened to and will unless prohibited by this Court attempt to enforce the said demands and have threatened to and will unless prohibited by this Court attempt to take charge of said properties and divest these plaintiffs of the control, possession and management thereof and thereafter manage the same themselves or through its appointed agent in accordance with the [fol. 244] wishes and dictates of the Operators' Committee and the umpire.

34

That during all of the period of time of the pretended proration orders of the Corporation Commission of the State of Oklahoma, for the past twelve months the said orders have attempted to be enforced against certain individuals; and other favored individuals and operators have been permitted without molestation to produce their proration as they saw fit; that the said respondents herein have taken no action whatsoever against any operator in the State of Oklahoma for violation of the said pretended proration orders, notwithstanding the fact that it is well known to the respondents herein that the said orders have been violated indiscriminately by a large number of operators in all of the prorated fields in Oklahoma; that the defendants have been given knowledge of a large number of specific violations in prorated fields in the State of Oklahoma in violation of the said pretended orders of the said Corporation Commission and there has been no attempt to enforce said orders against such said favored individuals or operators.

35

That in the Oklahoma City field a large number of the operators are now and have been for many months past been violating with impunity the proration orders in said field and the Corporation Commission has taken no steps whatsoever to enforce the said orders as against said operators.

36

That if one of the said operators so violating the said orders who was a party to the agreement hereinabefore mentioned and by whom the Operators' Committee hereinbefore referred to was appointed no action is taken to enforce proration but each and every producer of oil in the Oklahoma City field who does not belong to said combination has been informed that he will not be permitted to produce any oil contrary to the provisions of the said order and/or contrary to the rules by the said Corporation Commission and/or contrary to the dictates and demands of the said umpire and said Operators' Committee.

37

That these plaintiffs have not been and are not represented on said Operators' Committee and did not agree to and with the producers forming said Committee and the [fol. 245] respondents herein have permitted a large number of said operators so represented on said committee to produce their properties and violate the said orders, but have advised these plaintiffs that any infraction of the rules of said Operators' Committee or of the rules of the said umpire or of the orders of the Corporation Commission by these plaintiffs will immediately be met by an attempt to take over and take charge of the properties of these plaintiffs and run the same under the orders of the said umpire, the said Operators' Committee and the said Corporation Commission.

38

That the defendants intend to and will unless restrained by this Court carry out the said threats and will attempt to take charge of the property of these plaintiffs unless these plaintiffs will produce their properties in accordance with

the wishes and dictates of the Operators' Committee and said umpire.

39

That if said properties be shut down or if possession thereof be taken by the respondents herein or by any other persons at the instigation or request of the respondents herein, their agents, servants, and employees the total value of the said property will be destroyed; that possession of said properties will be taken in the name of the State of Oklahoma without making any bond whatsoever for the protection of the plaintiffs in their said property rights, and should these plaintiffs finally win in said action and said properties are destroyed, these respondents would be wholly without recourse.

40

That the damage to these plaintiffs would be in excess of $100,000.00 by the shutting of said properties, or taking same over by Respondents; that said loss would be irreparable, and plaintiffs have no adequate remedy at law.

41

That the shutting in of said wells, or taking possession thereof by the respondents is wholly without authority of law, and if same be accomplished it will be the taking of private property of these plaintiffs without due process of law, and if said wells of plaintiffs be shut down and thereby destroyed, this plaintiff will be mulcted in large damages at [fol. 246] the suit of the owners of the royalty interests in said wells.

42

That in truth and in fact no hearing whatsoever was had before the Corporation Commission of the State of Oklahoma prior to or at the time of the making of said order, but that the said order was made by the defendants in this action as a result of and in pursuance of the said agreement which had been entered into by the Operators' Committee of said field; but that the respondents herein are now assuming to act as the Corporation Commission of Oklahoma and is assuming to exercise jurisdiction and authority and apply Judicial force; that said respondents as such purported Corporation Commissioners are assum-

ing to exercise jurisdiction of the petitioner herein under the said order and are threatening and will unless prohibited by this Court attempt to render said order effectual by contempt proceedings against petitioner herein and/or by the filing of Court proceedings against petitioner herein seeking the appointment of a receiver of the operating properties of your petitioner, and unless prohibited by this Court the respondents will proceed to try the same and enter final judgment therein.

43

Your petitioner represents and shows to the Court that the defendants herein are attempting to make an unauthorized application of Judicial force and are wholly without jurisdiction over said matter, and the parties hereto.

44

That said orders are void for the reasons as hereinabove set forth and for the additional following reasons, to-wit:

(a) That petitioner was not a party to said action, did not appear and participate therein and no notice to and/or no service of process was had upon your petitioner, and said respondents have no jurisdiction of this petitioner.

(b) That under Sections 7954 Et Seq. of the Compiled Oklahoma statutes of 1921, the Corporation Commission of the State of Oklahoma is given no authority whatsoever (even if said Sections be valid) further than to prevent the waste of crude petroleum in the State of Oklahoma.

[fol. 247] (c) That in said order the respondents did not attempt to determine the actual value of the crude oil in the Oklahoma City field, and no investigation has been had by the Commission to determine the valuation of such crude oil or petroleum.

(d) That the purported orders and the orders hereinabove set forth had never been published in any newspaper in the State of Oklahoma either of general circulation or otherwise.

(e) That there is absolutely no authority under the law giving the Corporation Commission of the State of Okla-

homa jurisdiction to close down for any length of time any producing oil wells in the State of Oklahoma.

(f) That if said act of the legislature as hereinabove stated be valid then the only authority given to the Corporation Commission to regulate the production from any wells is that if the full production from any common source of supply can only be obtained under conditions constituting waste as therein defined, then any person, firm or Corporation having the right to produce oil from any such common source of supply may take therefrom only such proportion of such crude oil and petroleum that may be produced therefrom as the production of the well or wells of any such person bears to the total production of such common source of supply and no determination of such percentage has been had.

(g) That no hearing whatsoever has been had to determine the production from the well or wells of this plaintiff, nor to determine the amount which this petitioner would be entitled to take from a common source of supply or such proportion as his production bears to the total production of such common source of supply.

(h) That said orders are not uniform throughout the State.

(i) That said orders are contrary to the laws of the United States relating to commerce;

(j) That said Corporation Commission is attempting legislative and judicial prerogatives and same are not conferred by Art. 8 of the Constitution.

45

That it is impossible to say for certain, but plaintiff believes and therefore alleges that his production herein in [fol. 248] the wells belonging to this plaintiff as hereinabove set forth, do not come from the same common source of supply as the majority of the other wells attempted to be regulated in said order in the Oklahoma City field.

46

That the respondents herein have commenced to and will unless prohibited by this Court proceed under Section 7961

of the Compiled Oklahoma Statute- for contempt claiming that this petitioner has violated the said act of the said legislature when in truth and in fact the same is an application or attempted application of judicial force to make this petitioner comply not with the laws of the State of Oklahoma, but with the rules and regulations of the umpire and the Operators', Committee in said field.

47

That in addition to said penalties if this respondent violates the said rules and regulations of said umpire and Operators' Committee and the rules and regulations of the said Corporation Commission, and the terms of the said orders hereinabove set forth, then the respondents herein will unless prohibited by this Court attempt to place the operating properties of this petitioner in the hands of a receiver at a suit brought by the direction of the respondents herein through the Attorney General of the State of Oklahoma.

48

That under Section 2, of Article 2 of the Constitution of the State of Oklahoma, all persons have the inherent right of enjoying the gains of their own industries but the respondents herein through the unauthorized application of judicial force are threatening to and will unless prohibited by this Court shut down and cause the complete and total destruction of the oil wells belonging to the petitioner herein, which oil wells constitute the gains of the industries of your petitioner herein.

49

That under Section 7 of Article 2 of the Constitution of Oklahoma, and the Constitution of the United States, it is provided: That no person shall be deprived of life, liberty or property without due process of law and your petitioner avers that there is no law in the State of Oklahoma permitting or authorizing or giving jurisdiction to the Corporation Commission of the State of Oklahoma to close down absolutely any producing oil well in the State of Oklahoma, [fol. 249] and your petitioner avers that the orders attempted to be made herein are unconstitutional and contrary to the constitution of the State of Oklahoma, and

contrary to the constitution of the United States of America.

50

Your petitioner further shows that the said purported act of the Legislature, being H. B. 168 S. L. 1915 P. 28 is unconstitutional and void for the following reasons, to-wit:

(1) That the act and the title of said act embraces more than one subject, and said contents are not expressed in the title of said bill.

(2) That the title of said act is vague and uncertain and idefinite.

(3) That the said act itself is an attempted delegation of legislative powers to the Corporation Commission of the State of Oklahoma by the Legislature of this State, and not in harmony with Article 9 of the Constitution of Oklahoma.

(4) That in the said act private property is taken and destroyed or authorized to be taken and destroyed without any process of any Court whatsoever.

(5) That said act is contrary to the constitution of the State of Oklahoma and denies or places within the power of the Corporation Commission of the State of Oklahoma to deny the right of all persons to the enjoyment of the gains of their own industry.

(6) That said act further attempts to place within the jurisdiction of the Corporation Commission of the State of Oklahoma, the right to arbitrarily determine the amount of crude oil which may be taken through any well from any particular oil bearing strata without any way of determination of the amount of crude oil underlying such particular tract of land.

(7) That said act in all of its provisions attempts to go further than to prohibit waste of natural resources and to such extent is beyond the power of the legislature of the State of Oklahoma to regulate or interfer- with.

(8) That Section 9 of said Act is not covered in the title of said act and is unconstitutional and void.

[fol. 250] Your petitioner further shows to the Court that if its wells herein be shut down for a period of sixty-five

days, that the value thereof and its investment therein will be practically totally destroyed; that your petitioner is not a party to and has no right of appeal of said order of the said Commission; that no remedy by appeal or any other method is open to this petitioner and if open such appeal would not stay such orders pending such appeal; that unless this cause can be speedily and immediately heard, your petitioner is wholly without remedy and that any other relief save and except the writ of prohibition is inadequate and insufficient in that this petitioner can not have any cause of action speedily determined and during any period of determination its properties would be destroyed; that no other Court in the State of Oklahoma under Section 20 of Article 9 of the Constitution of this State has any jurisdiction to review, reverse, or annul any act of the Corporation Commission or to suspend or delay the execution or the operation thereof or to enjoin, restrain or deter the Commission in the performance of its official duties; and that no other Court would assume jurisdiction in this matter; that unless prohibited the said Corporation Commission will proceed in said matter and make such unauthorized application of judicial force and this petitioner will suffer an irreparable loss if it fails to comply with said order; and its properties will be totally destroyed if it does comply with said orders; and that your petitioner has no adequate remedy at law.

Wherefore, premises considered, petitioner prays that this Honorable Court issue herein its alternative writ of prohibition, directed to the respondents herein, commanding them and each of them to desist and refrain from any proceedings in an attempt to enforce the said orders or any other orders of the Corporation Commission in said matter or of the rules and regulations of said Operators' Committee or of the said umpire, and to desist and refrain in said capacity from exercising further jurisdiction over the person or property of your petitioner in this action; that said alternative writ be made returnable during term time of this Court, and be set for hearing; and that upon a final hearing thereof that the said purported law and orders under which the said Corporation Commission is attempting to proceed be declared unconstitutional and void, and that the alternative writ of prohibition herein be made

[fol. 251] permanent; for costs and for all other and proper relief.

John Head, Attorney for Petitioner, C. C. Julian Oil & Royalties Company, 614 Cotton Exchg. Bldg.

(Verification by C. C. Julian, by agreement not included herein.)

(Exhibits attached thereto form part of Plaintiff's Exhibit #33, and are not therefore duplicated.)

(b) Response.

[fol. 252] Filed in Supreme Court of Oklahoma Sep. 2, 1930. Jessie E. Moore, Clerk.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 21640

C. C. JULIAN OIL & ROYALTIES COMPANY, Petitioner,

vs.

FRED CAPSHAW, E. R. HUGHES and C. C. CHILDERS, Corporation Commissioners of the State of Oklahoma, Respondents

RESPONSE

Come now Fred Capshaw, E. R. Hughes and C. C. Childers, Corporation Commissioners of the State of Oklahoma, and for their Response to the Alternative Writ of Prohibition issued herein on the 28th day of August, 1930, say:

I

That the facts stated in the "Petition for Writ of Prohibition" are insufficient to entitle the petitioner to the relief demanded.

II

The respondents now and at all times hereafter without waiving, but reserving and saving all objections to the many errors, uncertainties, imperfections, insufficiencies, irrelevancies and impertinences in the petition contained,

for response and answer thereto, or unto so much or such parts thereof as respondents are advised that it is material or necessary to make answer to, say:

1. That they deny all and singular, each and every, allegation of fact in said petition contained, except such as may be hereinafter expressly admitted.

2. Respondents admit that they are the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma, and as such constitute the Corporation Commission of the State of Oklahoma.

3. Prior to the 23d day of June, 1930, the said Commission, pursuant to authority vested in it under the constitution and laws of the State of Oklahoma, made and entered certain orders and prescribed certain rules and regulations for the prevention of waste of crude oil in the Oklahoma City pool, and from time to time it entered its further and additional orders and prescribed further and additional rules and regulations for the prevention of waste of crude oil and natural gas in said State in the various pools, including the Oklahoma City pool.

On the said 23d day of June, 1930, one Wirt Franklin made application to said Corporation Commission, by written petition filed in cause No. 10146, then pending before the Commission, for further rules and regulations to prevent the waste of petroleum in certain oil and gas fields in the State of Oklahoma, a true photostat copy of which petition is hereto attached marked Exhibit "A", and made a part hereof.

[fol. 253]. Pursuant to the express Statutes of the State of Oklahoma conferring jurisdiction upon the Corporation Commission to hear and determine the same, the said Commission received and filed said petition and entered its orders setting the same for hearing at its office on June 30th, 1930, at 10:00 A. M., and directed that notice thereof be given as provided by law. A true photostat copy of said order is hereto attached, marked Exhibit "B", and made a part hereof.

Pursuant to said order, and the Statutes, reasonable notice of said hearing was given to all persons and classes interested therein by publication in the "Oklahoma News",

a newspaper having general circulation in the State, for five consecutive days, on to-wit: the 24th, 25th, 26th, 27th, and 28th days of June, 1930, and due proof of such publication was filed with said Commission prior to said hearing. A true duplicate copy of said notice and proof of publication is hereto attached, marked Exhibit "C", and made a part hereof.

Although no particular person, firm, or corporation was complained against, and personal service of notice was not required, a reasonable notice in writing was served personally on the petitioner herein on the 23rd day of June, 1930. A true photostat of such notice so served on petitioner being hereto attached, marked Exhibit "D", and made a part hereof.

Prior to the said hearing, proof of such personal service on the petitioner herein, and others, was filed with said Commission. A true photostat copy of such proof of service being hereto attached, marked Exhibit "B", and made a part hereof.

On the said 30th day of June, 1930, at the time and place prescribed in said order, and specified in said notices, the said petition was heard by said Commission; evidence was introduced, and after such hearing and consideration of the evidence, the said Commission duly and regularly made its findings of fact upon the evidence adduced, and promulgated certain reasonable rules and regulations for the enforcement of the statutes of the State of Oklahoma, prohibiting waste of crude oil or petroleum, and to that end regulating the taking of crude oil or petroleum from the several common sources of supply in the State as to prevent the inequitable or unfair taking from such several common sources of supply, and to prevent unreasonable discrimination in favor of one common source of supply as against another: all as set forth in the order, No. 5189, adopted and promulgated on that date by said Commission, a copy of which is attached to the petition herein, marked Exhibit "B".

3A. Thereafter on the 16th day of July, 1930, one Wirt Franklin made application for modification of said order No. 5189, by written petition then filed with said Commission, a true photostat copy of which is hereto attached marked Exhibit "F", and made a part hereof.

On said date the said Commission made and entered its order setting said application for hearing at the office of the Commission on Tuesday, the 22d day of July, 1930, at 10:00 o'clock A. M. A true photostat copy of which order is hereto attached, marked Exhibit "G", and made a part hereof.

[fol. 254] Reasonable notice of such hearing was given to all persons and classes interested therein by publication in the "Daily Oklahoman", a newspaper having general circulation in the State, for five successive days, to-wit: July 17, 18, 19, 20 and 21, 1930, and due proof of such publication was filed with said Commission prior to the said hearing. A true duplicate copy of such notice and proof of publication thereof is hereto attached, marked Exhibit "H", and made a part hereof.

Although no particular person, firm or corporation was complained against, and personal service of notice was not required, a reasonable notice in writing was served personally on the petitioner herein on the 17th day of July, 1930. A true photostat copy of such notice is hereto attached, marked Exhibit "I", and made a part hereof.

On the date fixed for the said hearing, proof of such personal service on the petitioner and others was filed with the Commission. A true photostat copy of such proof is hereto attached, marked Exhibit "E", and made a part hereof.

On said 22nd day of July, 1930, the Commission heard said petition, and the evidence adduced in support of the same, and upon consideration thereof made its findings of fact from such evidence, and duly and regularly promulgated certain further reasonable rules and regulations, modifying its then existing rules and regulations for the enforcement of the statutes of the State of Oklahoma, prohibiting waste of crude oil or petroleum, and to that end regulating the taking of crude oil or petroleum from the several common sources of supply in the State, as to prevent the inequitable or unfair taking from such several common sources of supply, and to prevent unreasonable discrimination in favor of one common source of supply as against another: all as set forth in the order, No. 5246, adopted and promulgated on the 24th day of July, 1930, by said Commission, a copy of which is attached to the petition herein, marked Exhibit "A". It was provided in said

orders that jurisdiction of the cause was retained by the Commission and notice given that supplemental and ancillary orders would be made therein from time to time, as required by new developments, and as instructions to the umpire and operators' committee.

4. That said order, No. 5246, was in force and effect from the date of the entry thereof until the 31st day of August, A. D., 1930, and the said order No. 5189, except insofar as it was modified by order No. 5246, has been in force and effect since the date of the entry thereof, and, except as further modified by order entered August 30, 1930, after due notice and hearing, is at this time in force and effect; and by the terms of said orders it was found, determined and ordered by said Corporation Commission, among other things, as follows:

(a) That there was at the time of the issuance of said orders, a grave condition of over-production of crude oil or petroleum in the State of Oklahoma, and a consequent actual and threatened condition of waste of such petroleum, and that said condition would continue through July, August and September 1930, and that by reason thereof it was necessary to set up a comprehensive plan of curtailment and proration of crude oil production in the flush-production pools of said State, including the Oklahoma City pool, in order to prevent economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands.

[fol. 255] (b) That in order to curtail the production of crude oil in a manner to prevent the commission of waste, it was necessary to enforce proportionality of taking of crude oil from the wells and leases in the flush and semi-flush areas, including the Oklahoma City pool, and that unless such proportionality be required, injustice would result as between producers in the same pool in that drainage would occur from one lease to another and an undue proportion of the gas pressure in the oil containing formations would be utilized by some operators to the detriment of others and injustice as between operators in different pools and unreasonable discrimination would arise as between pools.

(c) That each person, firm or corporation having the right to drill into and produce oil from any of the pools or areas and extensions thereof that were covered by said order might take from such pool or area and extensions thereof, only such proportion of all crude oil and petroleum that might be produced therefrom under said order as the production of the well or wells of such person, firm or corporation in said pool or area bore to the total potential production of such pool or area; and that in the case of each such pool or area the umpire and the operators' committee appointed by said Commission, for said pool or area, should determine whether the production should be curtailed on a time basis or on the basis of a percentage of potential daily production, but that such decision shall be reported by the umpire to said Commission for approval, and in no event should any pool and its extensions be permitted to produce more than its allowable output as fixed by said order.

(d) That beginning July 15, 1930, and continuing until and including August 31st, 1930, (and by the order of August 30, 1930, continuing until September 30, 1930 (the allowable production of all wells in the Oklahoma City pool should be that proportion of their potential production that the reasonable market demand from the pool as a whole should bear to the potential production of the pool as a whole; provided, that the maximum allowed production should be 18¾% of potential production; and, provided further, that whatever demand for petroleum from the Oklahoma City pool that might exist should be prorated and allocated among all the producing leases; that in case the reasonable market demand should at any time be less than 18¾% of the potential production the umpire and operators' committee should determine such percentage production as would allow a production equal to said reasonable market demand, and report the same to the Commission.

(e) That to establish equality between producing wells and drilling wells, each well then drilling in any of said areas, or which might be commenced in said areas or in any new areas prior to September 30, 1930, should take a delay prior to being brought into production, equal to the accumulated shut-in time and accumulated equivalent time resulting from pinching of producing wells from the beginning

of the proration period of each pool, said period of delay to be computed in each instance after allowing seven (7) days from the cement to set; provided the maximum shut-in time in each of said pools should be according to the following schedule:

Area	No. of days cement to set	No. of days of open flow for test	Days shut down	Total
Oklahoma City	7	1	57	65

(and other pools as shown by said orders.)

[fol. 256] (f) That all purchasers and carriers of oil in the State of Oklahoma be and they were forbidden to purchase or carry oil produced in violation of such orders of the Commission: all as is more particularly shown by Exhibit "A" and "B", attached to the petition.

That in addition to a chief oil and gas conservation agent, and certain of its other agents, the said Commission appointed certain additional agents for the enforcement of the aforesaid conservation proration orders, namely, Ray M. Collins as chief umpire for the State, and an umpire and operators' committee for each of the oil pools affected by said orders, the umpire for the Oklahoma City pool being Otto Bradford, and the operators' committee for said pool being M. J. Kirwan, Wirt Franklin, Glenn Harroun, J. S. Sidwell, and R. B. Roark, all of whom were appointed with the consent of the Governor of said State, and respondents allege that said agents of the Commission accepted their several appointments and have been, since the date of said orders, the duly appointed, qualified and acting agents of said Commission for the enforcement of the said orders.

Respondents state that the Commission thereafter found that the potential production of the producing oil wells in the Oklahoma City pool is and has been since prior to the date of the entry of the said orders of June 30, 1930, and July 24, 1930, far in excess of the transportation and marketing facilities and reasonable market demand for crude oil in said field, and the transportation and market facilities and reasonable market demand for crude oil in said field has been less than the maximum allowed production of

18¾% of the potential production of said field as fixed by said order of July 24, 1930, and that the said demand for petroleum for said pool was for but 8⅓% of the total potential production thereof, and the said umpire and operators' committee for said pool determined that 8⅓% of the total potential production was the allowable production from said pool, as provided in the said orders, rules and regulations of the Commission, and reported in writing their finding to the said Commission, and the said Commission made and entered its order fixing said percentage of said potential production as the allowable production from said pool; also that said umpire and operators' committee for said Oklahoma City pool determined upon the time basis as the best and most equitable basis for the production of oil from said Oklahoma City pool and reported said determination to the said Commission, which made and entered its order approving the same; a copy of which report, and the approval thereof by the Commission is hereto attached, marked Exhibit "K", and made a part hereof. Thereby each operator in said field was required to close in each of its wells except for one day in each twelve days, and has been and is permitted to operate same at full capacity for one day of twenty-four hours each out of every twelve days, beginning after the expiration of the delay required by said order to be taken after the completion of each such well, save only for one day of open flow test thereof, as provided in said order. Respondents further show to the Court that in said Oklahoma City pool each newly completed well, if said order be complied with, must take the maximum shutin time of sixty-five days after the final string of casing has been set and cemented, except for one day during said period.

5. Respondents say that the Commission was fully authorized by the constitution and laws of the State of Oklahoma to make and enter the said orders, and promulgate said rules and regulations, and that the same were entered and promulgated in proper proceedings, properly instituted before the Commission, and after hearings upon such notice as was required by law, and the same were and are a valid exercise of the legislative power of the State.

[fol. 257] Respondents deny that the ratios as fixed by said orders were arbitrary, but state that the same were

based upon evidence adduced at the hearings showing the necessity therefor, and the reasonableness of the ratios adopted.

Respondents expressly aver that said orders were intended and said rules and regulations promulgated for the purpose of preventing waste.

The respondents further say that the said Corporation Commission found that during the period covered by the said orders and rules and regulations, the full production from the common source of supply known as the Oklahoma City pool, as well as other pools affected by said orders, could only be obtained under conditions cons-ituting waste as defined in the statutes of the State of Oklahoma; that under the said orders, rules and regulations, the petitioner, as well as each person, firm and corporation having the right to produce oil from the common source of supply, known as the Oklahoma City pool, was and is permitted to take such proportion of all the oil that may be produced from such pool or common source of supply without waste, as the production of any well or wells of the petitioner bears to the total production of such pool or common source of supply.

Respondents have no knowledge, and therefore deny that a large number of owners of the oil wells in any of the oil fields of the State of Oklahoma, entered into an agreement and formed a combination in the form of a trust or conspiracy, and agreed among themselves that they would cause to be taken such action as would restrain the amount of oil shipped by railroad and pipe lines in intrastate and interstate commerce or that it was agreed that an operators' committee should be formed which would determine the amount of oil which could be produced by each and every operator in the said field and the amount of oil which should be run through the pipe lines, or that the purpose of the formation of said committee was to restrain and withhold a portion of the commerce and trade through and from the State of Oklahoma, and to the several states of the United States. Respondents state that the only operators' Committees of which it has any knowledge are those appointed by the Commission as its Agents for the sole purpose set forth in said orders.

Respondents expressly deny that any operators' committee appeared before the Commission and petitioned it

to take jurisdiction of said action for the purpose of restraining the trade among the several states under the guise of any law of the State of Oklahoma.

Respondents state that the jurisdiction of the Commission was invoked in the manner and for the purpose hereinbefore set forth, and the orders of the Commission were made upon facts found from the evidence introduced at the hearings, and for the purpose of preventing waste of oil and gas as prohibited by the laws of the State of Oklahoma, and not for the purpose of restraining trade.

Respondents admit that the Commission found as a matter of fact that it was necessary to curtail the output of crude petroleum from certain pools and fields in the State of Oklahoma and state that the Commission found that it was necessary so to do for the reason that the full production from said pools and fields could only be obtained under conditions constituting waste as defined in the laws of the State of Oklahoma. Respondents admit that the Commission [fol. 258] found that during the period covered by said orders, not to exceed 18¾% of the potential production of the Oklahoma City pool could be had without waste as defined in the laws of the State, and that at no time could a total production be had therefrom without waste in excess of the reasonable market demand of oil produced from said pool.

Respondents say that obedient to the provisions of said order its agents, the umpire and the operators' committee, did ascertain and report to it that the reasonable total market demand of crude oil during the months of July and August from the Oklahoma City pool would not exceed 8⅓% of the total potential production of the wells in said field, and that the proportion that the owner of each well drilled into said pool would be permitted to take under the laws of the State, and said orders of the Commission was and would be 8⅓% of the potential production thereof, and that to limit each well to such percentage, the same should be allowed to produce to its full capacity for one day of twenty-four hours in each twelve days, and the Commission having found that such percentage was correct thereupon approved said report and ordered as hereinbefore set forth.

Respondents expressly deny that there is or was at any time any agreement between them and any operators' committee that the operators' committee should be permitted

to determine the necessity of the production of oil in any of the several oil fields, and that the Commission would pass such orders and resolutions as were necessary to carry out the wishes of such operators' committee.

Respondents state that each and every provision of the orders and rules of the Commission were made in good faith and in the independent exercise of the judgment of the Commissioners based upon facts found from competent evidence, for the sole and only purpose of carrying into effect the laws of the State of Oklahoma, and under the authority thereof.

Respondents deny that under the orders, rules and regulations of the Commission there is any unreasonable discrimination in favor of one common source of supply as against another and allege that if there was the remedy for the correction thereof is by appeal or by application to the Commission for modification, as provided by law.

Respondents deny that they are threatening to, or will deprive the petitioners of the use of their property, and of the management and control of the same, or the proceeds thereof, or will partially, if not wholly, destroy the properties of the petitioners.

Respondents deny that they or the Commission have delegated, or are attempting to delegate to the umpire or operators' committee the right to legislate or make rules and regulations for the conduct of legitimate business or confer upon the umpire and operators' committee any authority not expressly provided by law.

Respondents expressly deny that they are now or have been discriminating against a portion of the producers of the field, or are now permitting a part of said operators to produce their wells at a greater percentage than eight and one-third per cent, or are permitting production in other fields in excess of that allowable under said orders, and deny that they have permitted their agents so to do.

Respondents expressly deny that the Commission has by its orders or in actual practice delegated to the umpire and to the operators' committee the right to make orders as to proration, or to increase or decrease the allowable proportion of production. They deny that any instructions to pipe lines or *or* other carriers have been given, other than contained in said orders.

[fol. 259] Respondents admit that there are oil fields in Oklahoma which are now producing the full amount of oil that can be produced therein, and that the Commission has not required proration there-of, and admits that under the Commission's orders, copies of which are attached to plaintiff's petition, the wells in some of the fields are permitted to produce a larger percentage of their potential production than wells in other fields, which percentages in the fields here referred to are shown in the said orders; Respondents allege that upon the evidence adduced at the hearings on said proposed orders, the Commission found that in the oil fields of the state which were not required to curtail production, that such was not necessary in order to prevent waste in such fields, for the reasons as particularly shown in paragraph numbered (g) in said order of June 30, 1930, and stated therein their reasons for not ordering the curtailment of production in said fields, which said findings and reasons are here referred to and made a part hereof; and respondents further state that the Commission found from said evidence and stated as is particularly shown in paragraphs numbered (L) and (I) of said order of June 30, 1930, that it was necessary to establish varying percentages of curtailment as between the flush and semi-flush pools in said State in order to prevent the waste of crude oil therein and to prevent unreasonable discrimination between the *the* several pools of the State, which findings and reasons are referred to and made a part hereof.

Respondents expressly deny that they have ever attempted to enforce the orders of the Commission against certain individuals only or that they have permitted favored individuals and operators without molestation to produce their proration as they saw fit. Respondents aver that proceedings have been taken against all persons, firms and corporations who within the knowledge of the respondents have been charged with a violation of said orders. Respondents further expressly deny that any operators in the Oklahoma City field are now or have been violating said orders with impunity, and aver that proper proceedings have been instituted to enforce the said orders against all who have been charged with a violation of said orders. Respondents aver that they and their agents have and will enforce the said orders, rules and regulations against all per-

sons, firms and corporations, and require them to comply therewith without favor or discrimination.

Respondents say that the several producers and purchasers and carriers of oil have been advised as to the proportion of its potential production each well should be allowed to produce under the terms of the statutes and orders of the Commission, and the amount that had been produced by each well thereunder.

Respondents deny that the wells of petitioner or other producers are endangered by shutting the same in as provided in the orders of the Commission.

Respondents say that wells offsetting the wells of petitioner, are or were required under the existing and previous orders of the Commission to remain shut down, except for one day, for sixty-five days after cementing.

Respondents deny that the petitioner will suffer any loss of oil by drainage under the operation of the orders and rules of the Commission. Respondents say that the area of the lots described in the petition as belonging to petitioner is only 10,500 square feet or less than one-fourth (¼) of an acre and that not more than 15,000 barrels of oil in place underlies the said lots and that under the operation of the orders and rules of the Commission the petitioner will recover through its well an amount of oil largely in excess of the amount in place thereunder.

[fol. 260] 6. That under the constitution and laws of the State of Oklahoma, any corporation, person or firm may be fined by the Corporation Commission, such sum not exceeding five hundred dollars, as the Commission may deem proper, for the violation of any of its rules and requirements, in contempt proceedings instituted by any citizen of the State, or other party affected by such order, by filing an affidavit with the Corporation Commission setting forth the acts of omission or failure to comply with such order or requirement. Upon filing of such affidavit or information, it is the duty of the Commission to forward to such offending Corporation, person or firm, a copy of such affidavit or information, and to issue citation to such corporation, person or firm, to answer at a time fixed in the citation, not less than *than* ten days nor more than twenty days from the date of the service of the citation.

Respondents say that on the 20th day of August 1930, one Otto Bradford filed an affidavit, with the Commission that the petitioner herein, among others, had violated the said orders and requirements of the Commission, setting forth that the petitioners had omitted and failed to comply with such order and requirement in that it had prior to August 20, 1930, kept its well on its Shepard farm in Section Fourteen (14), Township Eleven (11) North, Range Three (3) West, open and produced oil therefrom in excess of the time permitted by the order and regulation of the Commission for one day and twenty-one hours. That, as was their duty, the res-ondents issued its citation to all corporations, firms and persons complained -gainst, requiring them to answer on the 8th day of September, 1930. A copy of the citation so issued to the petitioner being hereto attached marked Exhibit "L.", and made a part hereof. That such citation has been served upon petitioner, and copy of said affidavit delivered, but return thereof has not yet been made. That the petitioner has the right to appear on said 8th day of September, 1930, and file plea, demurrer or answer, and it will be the duty and respondents will accord petitioner a full hearing thereon, and ample opportunity will be given to introduce proper evidence, and it will then be their duty and the respondents will, after completion of the evidence and argument of counsel, render such judgment as they believe is warranted by the law and evidence. That if the judgment should be adverse to the petitioner he shall have the right and will be accorded an appeal to this Court as provided by law.

Respondents say that petitioner has not appeared before the Commission and made any objection to it that is has not jurisdiction to hear and determine said complaint, nor has the alleged lack of jurisdiction been called to the attention of the Commission.

Respondents say that no other proceeding has been taken to enforce said orders, rules and regulations against petitioner, than the pending proceedings above set forth, and no other proceedings or action was or is contemplated by respondents against the person or property of the petitioner in the matter of the enforcement of the laws of the State of Oklahoma, relative to waste of crude oil, or the orders, rules and regulations of the Commission, aforesaid

made pursuant thereto. That for any action taken or contemplated by the respondents, the petitioner has available the ordinary and usual remedies provided by law.

The respondents deny that they have threatened to or that they will undertake to seize the property of petitioner and manage or operate the same. Proceedings for the appointment of a receiver can only be had in a court of competent jurisdiction, at the suit of the State through the Attorney General or any County Attorney. The respondents are without power to require the institution of such [fol. 261] proceedings by the officers named, or to control their discretion in the premises, and they have not undertaken, nor do they contemplate undertaking so to do.

Wherefore respondents pray that the Alternative Writ of Prohibition herein be quashed and vacated, and that same do not be made absolute, and for such and further relief to which they may be entitled.

J. Berry King, Attorney General; —— ——, Assistant Attorney General; E. S. Ratliff, Attorney for Corporation Commission, Attorneys for Respondents. H. H. Smith, W. C. Franklin, W. P. Z. German, Burford, Miley, Hoffman & Burford, of Counsel.

(Verification by E. R. Hughes, by agreement not included herein.)

(c) Brief of Petitioner. (By agreement, not included herein.)

[fol. 262] PLAINTIFF'S EXHIBIT 42.

No. 42, Record, p. 377

Map of area in Oklahoma City field adjacent to Morgan Stout Well No. 1.

(Here follows Plaintiff's Exhibit 42, side folio 263)

FOLD-OUT IS TOO LARGE TO BE FILMED

[fol. 264] PLAINTIFF'S EXHIBIT 43

No. 43, Record, p. 381

April overs and unders

. . . . . .

(By agreement not included herein.)

[fol. 265] No. 44

Report and recommendations of Operating Committee appointed February 25, 1931 in re Gas Conservation and Water Intrusion, Oklahoma City field, offered in evidence August 3rd, 1931, at the time of the submission of this Cause, and upon the Defendants' objection to the competency and materiality thereof, was held to be "material but not competent", to which ruling the Plaintiff was granted an exception; and thereupon, Plaintiff offered to prove the authenticity of the document by E. F. Guidinger, one of the signers thereof, who was present in response to subpœna for that purpose; that such privilege was also denied, notwithstanding Counsel for Plaintiff stated that the photostat of the original document had come into their possession since the trial of the case and before the day for submission thereof upon argument;

To all of which ruling the Plaintiff was granted an exception, and now renews its contention that the data contained in said Exhibit #44 should be received by this Honorable Court and consideration given thereto, in the determination of this cause:

That said document as so offered in evidence, was in words and figures as follows:

[fol. 266] PLAINTIFF'S EXHIBIT NUMBER 44

Okla. City, Okla., March 11, 1931.

Mr. Wirt Franklin, Chairman Oklahoma City Operators, Oklahoma City. Oklahoma.

Subject: Report and recommendations of Operating Committee appointed February 25, 1931 in re gas conservation and water intrusion, Oklahoma City field

DEAR SIR: Pursuant to a call to Mr. Otto B. Bradford, the Oklahoma City Operators met in the Chamber of Commerce rooms, Oklahoma City, on February 25, 1931, and

adopted a resolution presented by Mr. H. L. Briggs, of the Coline Oil Corporation, creating an Operating Committee for the purpose of studying the problems of gas conservation and water encroachment in the Oklahoma City Field and reporting back to a meeting of Operators on March 11, 1931. The Committee appointed by you consisted of:

Representative	Company
Mr. Kirwan, Chairman.	Indian Territory Ill. Oil Company.
Mr. Paschal	Coline Oil Corporation
Mr. McWilliams	Skelly Oil Company
Mr. Guidinger	Phillips Petroleum Company
Mr. McKee	Cromwell-Franklin Oil Company
Mr. Brauchli	Anderson-Prichard Oil Corporation
Mr. Thomas	Thomas B. Slick Companies

Abstract of Report

The Committee recognizes that the Simpson formation in the Oklahoma City Field is predominantly an oil-bearing [fol. 267] formation, and therefore, recommends that all wells producing from this formation be classified as oil wells; provided however, that wells with gas-oil ratios in excess of 20,000 cubic feet of gas per barrel of oil be classified as "Combination Oil and Gas Wells". Wells classified as "Combination Oil and Gas Wells" shall have the same limitation in regard to oil production as oil wells; provided further, that said "Combination Oil and Gas Wells" shall have an additional limitation as to the amount of gas they are permitted to produce. The Committee recommends the repair of certain wells, producing from the Simpson formation, to reduce their gas volume; and also the repair of certain wells producing from the Simpson or lower formations, in which the Prue sand is exposed. The Committee recommends the taking of a gas volume of each well when the oil potentials are taken in April. Suggestions are made relative to the plugging off of water that may be found in the base of the Johnson sand or in formations below the Johnson sand. No recommendations are made relative to the plugging off of water in Siliceous lime wells, excepting wells in which the Prue sand is exposed below the casing.

The Committee, assisted by Mr. John E. Van Dall, of the Sinclair Oil and Gas Company, and others, was in session three and one-half days, with full attendence, studying the problems.

Based on information furnished by various members of the Committee, the gas-oil ratio of a majority of oil wells [fol. 268] in the Oklahoma City Field were found to be as follows, and are believed to be fairly representative of conditions in the Oklahoma City Field:

Gas-oil ratio	No. wells	Oil, potential barrels	Gas volume, M cu. feet
Less than 1,000	167	3,158,684	2,130,630
1,000– 2,000	115	1,290,282	1,707,159
2,000– 3,000	58	533,762	1,297,266
3,000– 4,000	41	394,554	1,336,288
4,000– 5,000	18	116,374	517,350
5,000– 6,000	14	106,736	584,543
6,000– 7,000	14	103,033	668,269
7,000– 8,000	15	92,915	678,325
8,000– 9,000	4	18,846	164,756
9,000–10,000	12	67,209	639,590
10,000–20,000	31	92,933	1,313,656
Above 20,000	50	55,028	3,038,612

The above tabulation shows that there are fifty oil wells producing with ratios over 20,000 cubic feet of gas per barrel of oil. In addition to this number of wells, there are fourteen wells producing from the Simpson formation that have been temporarily classed as gas wells by the Corporation Commission on account of their relatively large volumes of gas and small oil production, this makes a total of sixty-four wells producing from the Simpson formation with gas-oil ratios in excess of 20,000 cubic feet per barrel.

The Committee is of the opinion that wells producing [fol. 269] from the Simpson formation and which are now classified as gas wells should be re-classified by the Corporation Commission as oil wells.

After considering such factors as the number of producing sands, the varying depths that wells are cased stratigraphically, the geologic structure, number of sands pene-

trated by various wells, etc., the Committee adopted the following resolution, Mr. Paschall registered "Not Voting" on this resolution:

Resolution

"In the Oklahoma City Field, all wells producing from the Simpson formation shall come under one of two classificational,

"(1) A well producing not more than 20,000 cubic feet of gas per barrel of oil shall come under the present proration plan for oil wells.

(2) A well producing in excess of 20,000 cubic feet of gas per barrel of oil shall be termed a "Combination Oil and Gas Well" and shall only be allowed to produce 20,000 cubic feet of gas per barrel of oil, unless the gas produced above this amount can be usefully used. If the excess gas can be usefully used, the well shall be allowed to produce in addition to its 20,000 cubic feet of gas per barrel of oil, the same percentage of its open flow gas capacity as an oil well is permitted to produce of its oil potential. In no event shall any well produce more oil than the alloted amount fixed by the allowable percentage of its potential."

[fol. 270] The Committee considered wells that are cased high in the upper Simpson formation in which some of the sands below the casing are largely gas bearing. Some of these wells produce large volumes of gas from the upper sands, but also produce a large amount of oil from lower sands, such as the Johnson sand. These wells, although their ratio may be less than 20,000 cubic feet per barrel, may be greater wasters of gas by volume than some of the wells where the gas-oil ratio is in excess of 20,000 cubic feet per barrel. The Committee is not prepared at this time to make definite recommendations for repair work of these wells, as it is believed that the wells which produce gas in excess of 20,000 cubic feet per barrel of oil should be worked on first. Provided repair work is successfully done on wells making more than 20,000 cubic feet of gas per barrel of oil, then the wells that produce large volumes of gas with a gas-oil ratio less than 20,000 cubic feet per barrel and which have upper gas-bearing sands exposed may be further studied in view of recommending repair work.

In connection with the repair of wells producing gas in excess of 20,000 cubic feet per barrel of oil, or wells producing large volumes of gas from upper exposed sands which are predominantly gas bearing, the Committee desires to specifically point out that the running of casing to reduce the gas volume or gas-oil ratio can only be successfully done in such wells that have formations predominantly gas-bearing exposed below the casing; for example, the Committee doubts the practicability of attempting to materially reduce [fol. 271] the gas-oil ratio or gas volume by cementing casing in a well from which the gas and oil come from a single sand. In wells where no remedial repair work is recommended and which produce in excess of 20,000 cubic feet per barrel of oil, the well should take the "Combination Oil and Gas Well' classification and its gas production limited according to the terms of the resolution aforementioned.

The Committee has examined the log records of all wells producing gas in excess of 20,000 cubic feet per barrel of oil and believes that fifteen wells can be repaired by running additional casing or plugging back to materially reduce the gas-oil ratio. No recommendations for repair are made at this time for the remaining thirty-five wells with ratios in excess of 20,000 cubic feet per barrel. A string of tubing in such wells may reduce their gas volume or gas-oil ratio.

These two classes of wells together with their oil production, gas volume and gas-oil ratio are tabulated according to their classification.

Class No. 1 are wells that probably can be repaired by plugging back or running casing.

Class No. 2 are wells that are high structurally and unless the operator reconditions them, they should be classed as "Combination Oil and Gas Wells."

[fol. 272]

Class No. 1

Wells with Gas-Oil Ratios Over 20,000 Cu. Feet per Barrel
Repair Recommended: (1) Bottom Plug or (2) Additional Casing

Company	Lease	Well No.	Gas volume, M cu. feet	Oil prod., bbls.	Gas-oil ratio
Cromwell-Franklin-I. T. I. O.	Trosper Park	24	148,696	3,306	44,977
Cromwell-Franklin	Trosper Park	32	110,000	348	316,000
Phillips	Jones Comm.	1	93,000	3,044	31,000
Slick-I. T. I. O	Dennis	1	210,000	5,476	38,356
Sub-total		(4 wells)	501,696	12,174	
	Repair Recommended: Additional Casing				
Anderson-Prichard	Gibbons	1	95,000	2,628	36,000
Coline	Clauer	10	36,600	836	43,900
I. T. I. O.	Coppinger	3	49,916	1,590	31,500
I. T. I. O.	H. W. Jones	4	76,720	2,100	36,500
I. T. I. O.	Lemmon	3	75,267	2,268	33,186
I. T. I. O.	Spillman	4	136,159	2,520	54,000
I. T. I. O.-Cromwell-Franklin	B. Johnson	7	66,500	630	106,000
Marco	Holder	1	40,000	1,248	32,050
Slick	Baker	1	82,500	1,430	57,700
Slick	Danareuther	1	29,200	773	37,700
Slick	Townsend	1	82,000	1,934	42,394
Sub-total		(11 wells)	769,862	17,957	
Total		(15 wells)	1,331,558	30,131	

[fol. 273]

Class No. 2

Wells with Gas-oil Ratios Over 20,000 Cu. Ft. per Bbl.
Wells are High Structurally and Unless Owner Reconditions Them They Should be Classified as Combination Oil and Gas Wells

Company	Lease	Well No.	Gas volume, M. cu. ft.	Oil prod., bbls.	Gas-Oil ratio
Anderson-Prichard	Orphanage	1	153,000	1,834	83,000
Coline	Clauer	16	26,664	690	38,600

Coline	Olds	1	31,552	1,476	21,734
Coline	Olds	5	35,400	804	43,500
Coline	Olds	6	39,000	600	54,500
I. T. I. O.	Drake	1	41,210	1,775	23,200
I. T. I. O.	Emerson	2	8,321	282	29,507
I. T. I. O.	Emerson	4	53,632	138	388,640
I. T. I. O.	Emerson	8	25,086	736	34,100
I. T. I. O.	Emerson	10	24,776	96	258,080
I. T. I. O.	L. Jones	2	21,925	1,010	21,700
I. T. I. O.	L. Jones	11	106,232	2,100	50,700
I. T. I. O.	Salsman	3	13,059	444	23,900
I. T. I. O.	Theimer	5	41,644	1,074	38,700
I. T. I. O.	Theimer	6	95,057	1,398	68,000
I. T. I. O.	Trosper	3	23,512	798	29,420
I. T. I. O.	Trosper	6	32,770	1,194	28,200
I. T. I. O.	Trosper	7	64,425	474	135,918
I. T. I. O.	L. Trosper	2	28,002	786	35,600
Shell	Petty	2	19,000	78	244,000
Shell	Petty	5	32,000	173	185,000
Sinclair	Kinter	2*	50,000	80	625,000
Sinclair	Kinter	4*	100,000	61	1,762,549
Sinclair	Kinter	5*	62,407	48	1,309,146
Sinclair	Kinter	6*	55,749	18	3,047,846
Sinclair	Kinter	7*	93,000	80	1,200,000
Sinclair	Kinter	8*	57,424	18	3,244,294
Sinclair	Kinter	9*	62,407	37	1,691,247
Sinclair	Stamper	2*	60,000	75	793,651
Sinclair	Vencl	7	30,800	1,224	25,200
Sinclair	Vencl	10	80,000	1,842	43,400
Sinclair	School Land No. 54	8	75,000	1,691	44,300
Skelly	Hoops	5	22,000	561	39,000
Slick	Foote-Briscoe	1	18,000	824	28,846
Total		35	1,707,054	24,897	

*Shut in since about August, 1930. Data furnished by Sinclair Company.

[fol. 274] The following wells have been tentatively classified by the Corporation Commission as gas wells and are producing from the Simpson formation. The Committee recommends that they be reclassified as oil wells or "combination oil and gas wells", as the case may be.

Classified Gas Wells in the Oklahoma City Field Producing from Simpson Formation

Company	Well	Gas vol. M cu. ft.
Champlin	Naden # 1 (1,500 M. daily)	75,000
Cromwell-Franklin-ITIO	Trosper Park # 7	75,000
Cromwell-Franklin-ITIO	Trosper Park # 28	100,000
Wirt Franklin	Theimer # 3	75,000
Government Pet.	Government # 1	60,000
Jones (Blackwell)	Scruggs # 1	187,000
Mid-Kansas	Fortson # 2	10,500
Phillips	Traders Compress # 1	80,000
Sinclair	Kinter # 1	30,000
Sinclair	Stamper # 1	14,300
Slick	Glidden # 1	65,000
Slick	Glidden # 2	29,000
Slick	Huseman # 2	38,000
Sunray (Gant-Garvin)	Harris	157,000
Total (14 wells)		985,800

[fol. 275] With reference to the repair work recommended for wells producing from the Prue sand and lower formations in the same well, the following resolution was unanimously approved:

Resolution

"That no well be allowed to produce from the Simpson or lower formations with the Prue sand exposed in the same hole."

The Following Wells are Cased Above the Pure Sand and are Also Producing From the Siliceous Lime

Company	Lease	Well No.	Gas volume, M cu. ft.	Oil potential, bbls.	Gas-Oil ratio
Coline	Olds	8	7,000	488	14,300
Coline	Warren	7	4,000	3,215	1,250
Coline	Warren	8	4,000	3,277	1,220
Coline	Warren	9	6,000	2,458	2,450
I. T. I. O	A. Brokaw	2	Dead	.....	.....
I. T. I. O	C. Brokaw	4	22,678	11,028	2,056
I. T. I. O	Wheeler	2	64,921	2,922	23,500
I. T. I. O	Wheeler	3	59,622	807	25,743
Prairie	Hiddleston	4	453	180	2,516
Slick	Zerkerle	1	814	814	1,000
Sub-total		10 wells	169,488	25,189	

A study of the above tabulation shows that these wells have an oil potential of 25,189 barrels and it is the opinion

of the Committee that if additional casing is run to shut off the Prue sand that the wells will probably stop flowing and it is doubtful if gas lift can be successfully applied to them. [fol. 276] The following wells are cased above the Prue sand and also produce from the Simpson formation:

Wells Cased Above the Pure Sand and Producing From the Simpson Formation

Company	Lease	Well No.	Gas volume M cu. ft.	Oil potential bbls.	Gas-Oil ratio
Blackstock	Harvey	1	26,000	1,500	17,300
Denver	Harvey	1	25,000	16,030	1,160
Cromwell-Franklin-ITIO	Trosper Park	29	80,000	(No test)	
Sinclair	Kinter	3	40,000	216	185,000
Sinclair	Kinter	10	30,000	89	336,000
Sinclair	Stamper	3	20,000	250	80,000
Sinclair	Stamper	4	20,000	21	95,400
Sinclair	Stamper	5	40,000	Gas well	
Slick	Dean	1	35,000	43,655	801
Slick	Hoopes	8	34,500	576	59,900
Slick	Thornton	1	18,600	11,966	1,555
Sub-total		11 wells	369,100	74,303	
Total		21 wells	538,588	99,492	

Recommendations Relative to Exclusion of Water from Producing Formations

The following resolution was unanimously adopted by the Committee:

Resolution

"All producing wells that have penetrated the Simpson formation, and, have exposed in the hole one or more sands in the Simpson, or a sand in the Simpson with the Arbuckle formation, shall, on showing water be immediately plugged back until the water is shut off, unless it is reasonable to believe that water is coming from some other well."

[fol. 277] The following resolution relative to water reports to the Umpire was unanimously approved by the Committee:

Resolution

"Each Operator shall file with the Umpire, between the 1st and the 10th, of each month, a report showing the percentage of water and approximate number of barrels of water produced daily by each well during the preceding month, provided that such reports need not be filed for wells producing less than one per cent water".

Answers to Questions Asked in Mr. Briggs' Resolution

1 Q. What is the proper gas-oil ratio to apply in the Okla. City field?

Ans. A maximum of 20,000 cubic feet gas per barrel of oil.

2 Q. Shall the same gas-oil ratio be applied to wells producing from different horizons? For example—(a) Wilcox sand, (b) Simpson sands other than Wilcox, (c) lime.

Ans. Yes.

3 Q. What shall be done in the case of wells having excessive gas-oil ratio when—

(a) They are properly cased?

(b) When they are not drilled too deep?

(c) When the insertion of tubing or application of back pressure increases the gas-oil ratio over that theretofore obtaining?

(d) When application of surface back pressure increases the gas-oil ratio?

(e) When successive openings show a marked variation above and below an average ratio?

[fol. 278] Ans. Wells producing gas with gas-oil ratios less than 20,000 cubic feet per barrel shall take the oil well classification; that is, no requirements is made that the gas from such a well be utilized.

Wells with gas-oil ratios above 20,000 cubic feet per barrel shall be classified as "Combination Oil and Gas Well" and the gas production limited to the same percentage of its potential gas volume as the percentage of the potential of the oil is permitted to be taken under the proration rules and regulations promulgated by the Corporation Commission.

3 Q. (f) When excessive gas-oil ratio is caused by an improperly cased well in the vicinity?

Ans. The owner of a well which produces with an excessive gas-oil ratio caused by an improperly cased well in the vicinity should first take the matter up with the owner of the improperly cased well, and if no satisfactory results are obtained, he may then take the matter up with the Corporation Commission, as it is the belief of this Committee that the owner of a well should not be penalized on account of a neighbor's negligence, particularly when the improperly cased well can be repaired.

4 Q. How the measurements of casinghead gas shall be taken; that is, by orifice meter, by Pitot tube, or what not, and what pressure base shall be used; that is, two ounces, four ounces, eight ounces, or two pounds? If by Pitot [fol. 279] tube, when and how often shall readings be taken, or shall recording gauges be used, and if the latter method be employed, what is the estimated expense of installing suitable measuring equipment upon each and every well in the field?

Ans. In addition to the following, see answer to Question No. 5. The pressure base on which the gas volume is to be computed shall be four ounces above 14.4 lbs. (or 14.65 lbs.); when the Pitot tube is used on a vent line the reading may be taken through a tap on the side of the vent line or through a smaller line extending up over the top of the vent line. The tables to be used for Pitot tube measurements shall be based on a specific gravity of 0.75, temperature 60° F., and 14.65 pounds pressure base; such gas tables to be supplied from the Umpire's office. It is estimated that a recording gauge suitable for use in connection with Pitot tube measurements would cost approximately $55.00. The estimated cost of an orifice meter up to a 10-inch setting is $350.00. The capacity of a 10-inch meter at pressures ordinarily carried in oil and gas separators is approximately 25,000 M cubic feet.

5 Q. What administrative steps shall be taken to insure the accurate measuring and reporting of casinghead gas from oil wells?

Ans. The Committee recommends that gas measurements shall be taken on each well at the same time that the next oil potential gauge is taken. The representative of [fol. 280] the Umpire shall witness and record gas gauges at the end of each hour during the potential test on each well and report in writing, on forms to be supplied by the Corporation Commission, the following information to the Corporation Commission with a copy to the Umpire:

1. Pressure and differential readings taken from Orifice meter charts.

2. Size of Orifice plate and size of line in meter setting.

3. For gas going through vent line:

(a) Diameter and number of vent lines.

(b) Pitot tube measurements:

(1) Inches of water or inches of mercury.

(2) Pounds per square inch (pressure gauge reading).

All Pitot tube measurements shall be computed by tables furnished by the Umpire; these tables to be based on .75 gravity, 60° F. temperature and 14.65 pressure base.

The Umpire shall inform each Operator his gas allotment for each of his wells whose potential gas gauge test shows a production of gas in excess of 20,000 cubic feet per barrel of oil. The Operator of such wells shall not produce a greater percentage of gas potential than the orders of the Corporation Commission permit for oil potential. Actual daily oil and gas gauges shall be reported to the Corporation Commission, copy to the Umpire, on all wells on production that produce gas in excess of 20,000 cubic feet per barrel, which are herein classified as "Combination Oil and Gas Wells".

[fol. 281] The gas gauges applying against the gas allotment of all wells producing in excess of 20,000 cubic feet per barrel, shall be made by orifice meters. (The answers to Question No. 5 were approved by all members of the Committee with the exception of Mr. Paschal.)

In the event the recommendations of your Committee are approved, it would be the further suggestion of this Committee that a competent engineer be employed by the Operators Committee and placed in charge of the proration of gas from the Oklahoma City Field, and that this engineer be made an agent of the Corporation Commission.

Respectfully submitted.

M. J. Kirwan, Chairman Indian Territory Illuminating Oil Co. M. J. Kirwan. E. A. Paschal, Coline Oil Corporation. E. A. Paschal. J. R. McWilliams, Skelly Oil Company. J. R. McWilliams. E. F. Guidinger, Phillips Petroleum Co. E. F. Guidinger. E. J. McKee, Cromwell-Franklin Oil Company. E. J. McKee. R. W. Brauchli, Anderson-Prichard Oil Corp. R. W. Brauchli. Harold S. Thomas, Thomas B. Slick Companies. Harold S. Thomas.

March 11, 1931, Oklahoma City, Oklahoma.

